

***United States Court of Appeals
for the Second Circuit***



JOINT APPENDIX

77-2038

In the
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES ex rel. ANTHONY BRUNO,
Petitioner-Appellant,
-against-

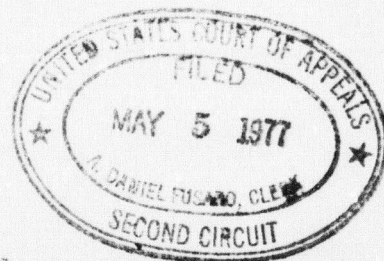
J. EDWIN La VALLEE, Warden of Clinton
Prison, Dannemora, New York,
Respondent-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

JOINT APPENDIX

KATHLEEN P. MARCH
80 Pine Street
New York, New York 10005
Attorney for Petitioner-
Appellant
(212) 825-0100

HON. LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Two World Trade Center
New York, New York 10047
Attorney for Respondent-
Appellant
Gerald G. Ryan
(212) 488-3068



PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

		<u>Page</u> <u>of Appendix</u>
1. Docket Entries		1
2. Mistrial	(M.1)	4
Minutes of Mistrial Hearing on 5/22/47 before Hon. Louis Goldstein, County Court, Kings County	(M.4)	9
3. Trial Transcript (Record on Appeal)		16
Index to Record on Appeal		17
Statement Under Rule 234	(T.1)	20
Notice of Appeal	(T.2)	21
Information re Louis Loffredo	(T.3)	22
Endorsements on Information	(T.5)	24
Information re Anthony Bruno	(T.6)	25
Endorsements on Information	(T.9)	28
Information re Dominick Carlucci	(T.10)	28A
Endorsements on Information	(T.12)	28C
Minutes of Presentment	(T.13)	29
Minutes of Arraignment	(T.14)	30
Indictment	(T.16)	32
Endorsements on Indictment	(T.18)	34
Minutes of Sentence of Louis Loffredo	(T.23)	37B
Minutes of Sentence of Anthony Bruco	(T.25)	38
Minutes of Sentence of Dominick Carlucci	(T.27)	39A
Extract From Clerk's Minutes	(T.29)	40
Testimony	(T.34)	45
Witnesses for People		
Gus Cirillo		
Direct	(T.36)	47
Cross	(T.44)	55
Recalled		
Recross	(T.119)	130
Peter Cirillo		
Direct	(T.51)	62
Cross	(T.59)	70
Vincent DiBari		
Direct	(T.61)	72
Cross	(T.80)	91
Redirect	(T.105)	116
Recross	(T.109)	120
Rerredirect	(T.110)	121
John McNally		
Direct	(T.111)	122
Cross	(T.115)	126

Trial Transcript (Record on Appeal) cont.

		<u>Page</u>
Harold A. O'Neill		
Direct	(T.117)	128
Motions	(T.127)	138
Charge to the Jury	(T.130)	141
Requests to Charge--Exceptions	(T.150)	161
Verdict	(T.152)	163
Motion to Set Verdict Aside	(T.155)	166
Plea Before Sentence	(T.156)	167
Sentence of Anthony Bruno	(T.162)	173
Sentence of Dominick Carlucci	(T.164)	174A
Sentence of Louis Loffredo	(T.169)	174F
Affidavit of No Opinion	(T.188)	174M
People's Exhibits	(T.176- 186)	175-180
4. Exhaustion		
A. Petition for a Writ of Error Coram Nobis dated 3/9/70		181
Order of Supreme Court, Kings County, of 11/17/70 denying 3/9/70 petition for Writ of Error Coram Nobis		191A
Letter referring to 2/7/73 order of Appellate Division, Second Department denying leave to appeal from 11/17/70 order (order itself is missing from court file)		191B
Order of New York Court of Appeals dated 4/9/73 denying leave to appeal from 2/7/73 order		191D
B. Petition for a Writ of Error Coram Nobis dated 5/1/72 and Traverse dated 6/14/72		191E
Order of Supreme Court, Kings County, of 6/16/72 denying 5/1/72 petition for Writ of Error Coram Nobis		192
Order of 8/7/72 of Appellate Division, Second Department denying leave to appeal from 6/16/72 order		193

	<u>Page</u>
Letter of 9/18/72 from law clerk to Judge Scileppi stating no jurisdiction for appeal to New York Court of Appeals of 8/7/72 order	194
5. Amended Petition for Writ of Habeas Corpus dated 5/7/73	197
6. Petitioner's 3/27/75 Affidavit in Opposition to Attorney General's Affidavit in Opposition	217A
7. Memorandum Decision and Order of Hon. Edmund Port, U.S.D.J., N.D.N.Y., dated 2/20/74, granting hearing and transferring proceeding to E.D.N.Y.	218
8. Memorandum and Order of Hon. Thomas C. Platt, U.S.D.J., E.D.N.Y., dated 4/15/75 denying amended petition for writ of habeas corpus	222
9. Judgment dated 4/16/75 dismissing petition for writ	233
10. Supplemental Memorandum and Order of Hon. Thomas C. Platt dated 10/23/75 denying application for a certificate of probable cause	234
11. Order of United States Court of Appeals dated 2/24/77 granting motion for certificate of probable cause, for leave to proceed in forma pauperis and for assignment of counsel	237
12. Parole Terms of petitioner Anthony Bruno	238

HABEAS

PLATT. 3

CLOSED

ATTORNEYS

TITLE OF CASE

UNITED STATES OF AMERICA
ex rel. ANTHONY BRUNO

For Plaintiff: Anthony Bruno
Pro Se

vs.

**J. E. LaVALLEE, as Superintendent
of Clinton Correctional Facility**

Medicaid #81
Bklyn, N.Y. 11228
Anthony Bruno
In Care of Rose Aquila
1213 79th Street
Bklyn, N.Y. 11228
680-6264

BASIS OF ACTION:

JURY TRIAL CLAIMED

ON

[illegible]

ABSTRACT OF COSTS

[illegible]

RECEIPTS, REMARKS, ETC.

RECEIPTS, REMARKS, ETC.

74C 329

U.S.A. ex rel. ANTHONY BRUNO vs. J. E. LaVALLEE,

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS
2-26-74	CAUSE ON TRANSFER FILED. (from NORTHERN DISTRICT OF N.Y. - Clerk's Office - Utica, N.Y. 13503) All following documents were received and filed: PETITION: MEMORANDUM-DECISION denying and DISMISSING PETITION; JUDGMENT: Application for certificate of probable cause with Judge Port's order endorsed on back of cover denying same; copy of decision of CCA denying motion for certificate of probable cause; Order on Mandate; Petition and Order granting extension to file amended complaint; Change of address of petitioner; Memo-Decision (2-20-74) transferring action; Certified copy of same, etc. Docket Entries (Certified) and letter of Clerk, N.D.N.Y. - Utica.	1
3-19-74	Letter of relator herein filed dated March 18, 1974 together with a copy of letter from Clerk of Court dated March 19, 1974	3 & 3
4-11-74	Letter of relator herein filed dated April 8, 1974 re action, etc.	4
5/20/74	Letter dated 5/16/74 filed from A. Bruno to Mr. L. Orgel re: Change of Address	5
12-10-74	BY PLATT, J. ORDER TO SHOW CAUSE FILED (1) The Atty., Gen., State of N.Y., as atty., for the respondent, to show cause before this Court by the filing of a return to the petition, why a writ of habeas corpus should not be issued, etc. (See Order)	6
12-12-74	Copy of letter of Clerk of Court filed dated Dec. 12, 1974 re enclosure of a copy of order to show cause, etc., cc: Atty., Gen., State of N.Y., District Atty, Kings County; J.E. LaVallee (order only)	7
4-1-75	Affidavit of Anthony Bruno filed together with letter dated March 27, 1975.	8 & 9
4-15-75	BY PLATT, J. MEMORANDUM AND ORDER FILED. THE PETITION IS DENIED. SO ORDERED. The Clerk of Court is directed to enter judgment in favor of the respondent and against petitioner DISMISSING the petition. Clerk is further directed to forward a copy of memo., to the petitioner. (See Memo., etc.)	10
4-16-75	Copy of letter of Clerk of Court filed dated April 16, 1975 addressed to relator herein re enclosure of a copy of memo., etc.	11
4-16-75	JUDGMENT FILED. ORDERED and ADJUDGED that the petitioner take NOTHING of the respondent and that the petition is DISMISSED.	12
4-23-75	Application filed for a Certificate of Probable Cause; Letter of Anthony Bruno filed dated April 23, 1975, etc.	13 and 14
10/29/75	By PLATT, J. - Supplemental Order and Memorandum dated 10/23/75 denying application for a cert. of prob. cause. Copies sent.	15

74C 329

CRIMINAL DOCKET

USA ex rel BRUNO

v. LaVALLEE

DATE _____

PROCEDURES

1-28-76 Copy of letter dtd 1-15-76 with the acknowledgment re this
filed and 74C 830 filed.

A TRUE COPY
 DATED 12/11/1917 ATTEST
 LEWIS ORGEL
 BY [Signature] CLERK
 DEPUTY CLERK

COUNTY COURT : KINGS COUNTY
TRIAL TERM, PART II

THE PEOPLE OF THE STATE OF NEW YORK

-against-

LOUIS LOFREDDO.
ANTHONY BRUNO
DOMINICK CARLUCCI

Defendant S.

Brooklyn, New York City,
May 21st, 1947
May 22nd, 1947

STENOGRAPHER'S MINUTES

(MR. HILFAND)

LOUIS LEHMAN
OFFICIAL STENOGRAPHER

COUNTY COURT

KINGS COUNTY

-----X
THE PEOPLE OF THE STATE OF NEW YORK :

-against- :

LOUIS LOFFREDO
ANTHONY BRUNO
DOMINICK CARLUCCI

TRIAL TERM

PART II

Defendants. :
-----X

(Ind.No.732/47: Robbery 1; G.L.1:Ass.2)
(Ind.No.842/47: Robbery 1; G.L.1:Ass.2)

Brooklyn, N. Y. City

May 21st, 1947.

B E F O R E:--

HON. LOUIS GOLDSTEIN

County Judge
(and a Jury)

A P P E A R A N C E S:--

Maurice Nias, Esq.,
Asst. Dist. Attorney
For the People;

Abraham Brodsky, Esq.,
Attorney at Law,
For the Defendants.

Louis Lehman
Court Reporter.

MR. NIAS: I now move the case of Indictment No.
842 of 1947, the People vs. Louis Loffredo, Anthony Bruno
and Dominick Carlucci, for trial.

THE COURT: Motion granted. Proceed with the selection of the Jury.

(A jury was duly empaneled, selected and sworn by the Clerk of the Court.)

THE COURT: We will select two alternate jurors.

(Two alternate jurors were empaneled, selected and sworn by the Clerk of the Court.)

THE COURT: Will counsel please step up here with the District Attorney?

(Conference at the Bench)

THE COURT: Mr. Foreman and gentlemen of the jury; The taking of testimony, by agreement of counsel, will take place tomorrow morning, and you can report back tomorrow morning. Please bear in mind that during the adjournment, you must not discuss this case among yourselves or permit any one to talk to you about it. Do not frame or express any opinion about the case. You must keep your minds open until the entire case has been submitted to you for consideration. In the meantime please refrain from any discussion about it, or express any opinion in your mind. Please report back here tomorrow morning at ten o'clock.

(The jury retires from the court-room)

THE COURT: The defendants are remanded.

(Whereupon an adjournment was taken to

May 22nd, 1947, at 10 o'clock A. M.)

3 8
(PEOPLE VS. LOUIS LOFFREDO and 2 others)

Brooklyn, New York City

May 22nd, 1947.

(The following took place, not in the presence
of the Jurors.)

THE COURT: I think in view of the circumstances here, we ought to agree to a mistrial here, and an adjournment in this case. Do you have any objection to that, Mr. Brodsky?

MR. BRODSKY: No, sir.

THE COURT: Mr. District Attorney?

MR. NIAS: No objection.

THE COURT: By agreement with counsel, I will set this case down for June 2nd. There will be no comments made at all.

MR. BRODSKY: Will Your Honor set it down for next Monday?

THE COURT: Yes, the 26th of May, and we can have another panel of jurors here then.

MR. NIAS: Yes, sir.

THE COURT: Bring down the Jury.

(The Jury returned to the court-room, and the following was had in the presence of the Jury.)

THE COURT: It has been agreed and consented to here, by stipulation of the attorneys on both sides,

to declare a mistrial in this case.

MR. BRODSKY: And that the case will be set down for next Monday.

THE COURT: Yes.

MR. BRODSKY: Monday, May 26th.

THE COURT: Yes.

MR. NIAS: Yes, sir.

THE COURT: Mr. Foreman and gentlemen of the Jury; you are excused now from any further consideration of this case, so you can take your places in the courtroom again please.

(The jury was discharged by the Court.)

(At this point, a witness, Vincent De Bari, appeared before the Court. Present also was Mr. Julius Helfand, Assistant District Attorney, Kings County.)

THE COURT: Is there any application by the District Attorney at this time?

MR. HELFAND: Where is the witness?

THE COURT: He is right here. What is your application?

MR. HELFAND: The District Attorney moves that Your Honor commit this witness as a material witness in this case and hold him in default of \$50,000.00 bail.

We make this application to Your Honor in the light of the facts with which Your Honor is familiar, and particularly on the ground that this witness' life is in jeopardy and in serious danger that he would not be available to the District Attorney when he is needed, and we ask that he be committed, and that the bail be fixed in the sum of \$ 50,000.00.

BY THE COURT: (To Mr. De Bari)

Q Mr. Di Bari, how old are you? A Thirty eight.

Q Are you married? A Yes.

Q Have you any children? A Three.

Q How long have you been working for this concern?

A Since ~~1931~~. 1931.

Q What is the name of the concern that you are working for? A Cirillo Brothers Ice, Coal and Fuel Corporation.

Q How long have you been working for them? A Since 1931.

Q And you have been working there continuously? A Well, no, I worked until 1942, and then I worked in the Navy Yard for three years, and I come back.

Q They are one of the largest firms that we have in this city, is that correct, and they are reputable people too?

A The Cirillos?

Q Yes? A Yes, sir.

Q You were the man that was held up in this case? A That is right.

Q You were the man that they tied up after the robbed the place? A That is right.

Q And you were the one that was approabbed after this weren't you, and your life threatened? A That is right.

THE COURT: I am going to give you the protection that the Court thinks you are entitled to, and at the same time I also want to warn you that if you do not stick to the truth in this case, and tell exactly what happened, and what you told before the Grand Jury, with reference to these three notorious gunmen and robbers. If you want to take thier place in this courtroom, and be a defendant, instead of these three notorious gunmen and robbers, that have records as long as your arm, I will give you that opportunity. I will hold you in \$50,000.00 bail, and I am going to direct the District Attorney, when he puts you into custody, not to put you in Raymond Street jail, but some place else, and if any one attempts to come near you or to your home, I want you to notify the police; and for your own information, I will also tell you this, and for your peace of mind, that these three gunmen will be held in Queens County on another robbery case, where they shot a policeman and almost killed him, and they have ght their identifiocation there too, and if there

is any more "fixing" to be done, at least in your own case, you ought to have your conscience clear, that you are going to come across and tell the truth here.

MR. DE BARI: I am telling the truth.

THE COURT: You owe that to the community to have these three notorious gunmen not let loose in our community.

MR. DE BARI: I did not get "fixed up" in this thing here.

THE COURT: That is the reason I had to declare a mistrial here because of your attitude.

MR. DE BARI: I told you before so I won't put you in any trouble or anybody else here. I don't want you to continue with a case where I know I will lie. I told you before I do not want to lie in a case.

THE COURT: You were frank enough to tell me your situation.

MR. HEEFAND: Except that I might point out to Your Honor that this witness will be told, when the case resumes for trial, whenever that is, if he wants to take the stand and lie, he will be confronted with his testimony before the Grand Jury, and if he admits in open court that he is lying, in that event we intend to indict him and prosecute him for perjury, as Your Honor has already

indicated to him. Perhaps the time that he is in custody he can think this over.

MR. DE BARI: I am telling you I am not going to testify. I don't care what do you do with me.

MR. HELFAND: That is what is going to happen.

MR. DE BARI: I am not going to stick my head out and get bumped off.

MR. HELFAND: You are the one that will be in jail.

MR. DE BARI: Put me in jail. I know what I am up against.

MR. HELFAND: You have done enough talking. We will enter a formal order, Your Honor, committing this witness as a material witness.

THE COURT: Where do you want him sent to?

MR. HELFAND: I don't know whether the Tombs will take a material witness. Here, he is not in the prison proper. He will be in civil detention, which is under the Sheriff's jurisdiction.

THE COURT: I will sign the order after it is submitted to me. Keep him out of Raymond Street anyhow. Will the Cirillo brothers please step up here?

(Messrs. Frank Cirillo, Peter Cirillo and
Constantino Cirillo appear before the Court.)

THE COURT: You gentlemen have seen what has taken place here so far in this matter, where you are so vitally concerned about this matter. I wish you would try to talk to this gentleman, for his own good, and that he should stand by the People in this case and to tell the truth about it, because what happened to you people could happen to anybody in our community, and to have these three gunmen defy law and order in our community to this extent, would be a shameful situation. It is a pitiful situation. This is a direct stab at law and order in our community, after the police have done their duty and arrested these three gunmen, with the long records that they have, and if I can do anything in my power to keep them in jail, I will do so. There is no reason why they should not be convicted in this case, and if they go to trial and are acquitted because of this man's fear to tell the truth, would be a travesty upon justice. I am sure that you gentlemen will not tolerate anything of the kind. You men have been in business in our community and have fine reputations, and I will call upon all of you to help us out. This man has taken a very foolish stand here.

If gunmen are going to run this town, the quicker the people of the community know it, the better. I will hold this man in \$ 50,000.00 bail, and before any bail is produced, I want to have the application submitted to me before it is approved, because I think you ought to stay in jail until you are ready to testify. I will also give you this assurance; that I will see that the Police Commissioner gives you every police protection that is necessary for your safety. There is no reason why you should take the brunt of this thing because these three gunmen did tie you up, and then robbed the place, and then you come here and say you do not remember how they looked like.

MR. DE BARI: That is what I told you beforehand. I know what trouble I am going to get into.

THE COURT: I hope you will think it over.

MR. DE BARI: I don't want to walk in fear on the street.

THE COURT: I will give you plenty of time to think this over. Submit your order to me, Mr. Holfand, on this matter, and I will have him detained.

New York Supreme Court

APPELLATE DIVISION—SECOND DEPARTMENT

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

—against—

LOUIS LOFFREDO, ANTHONY BRUNO and
DOMINICK CARLUCCI,

Appellants.

RECORD ON APPEAL

ABRAHAM H. BRODSKY
Attorney for Appellants
111 Broadway
New York 6, N. Y.

HON. MILES F. McDONALD
District Attorney of Kings County
Attorney for Respondent
400 Municipal Building
Brooklyn 2, N. Y.

Exhibit 1

BEST COPY AVAILABLE

INDEX

	PAGE
Statement Under Rule 234	1
Notice of Appeal	2
Information re Louis Loffredo	3
Endorsements on Information	5
Information re Anthony Bruno	6
Endorsements on Information	9
Information re Dominick Carlucci	10
Endorsements on Information	12
Minutes of Presentment	13
Minutes of Arraignment	14
Indictment	16
Endorsements on Indictment	18
Minutes of Sentence of Louis Loffredo	23
Minutes of Sentence of Anthony Bruno	25
Minutes of Sentence of Dominick Carlucci	27
Extract From Clerk's Minutes	29

ii

	PAGE
Testimony	34
Motions	127
Charge to the Jury	130
Requests to Charge—Exceptions	150
Verdict	152
Motion to Set Verdict Aside	155
Plea Before Sentence	156
Sentence of Anthony Bruno	162
Sentence of Dominick Carlucci	164
Sentence of Louis Loffredo	169
Affidavit of No Opinion	188
Clerk's Certificate	189

Witnesses for People

Gus Cirillo	
Direct	36
Cross	44
Recalled	
Recross	119
Peter Cirillo	
Direct	51
Cross	59
Vincent DiBari	
Direct	61
Cross	80
Redirect	105
Recross	109
Berredirect	110

iii

	PAGE
John McNally	
Direct	111
Cross	115
Harold A. O'Neill	
Direct	117

People's Exhibits

1. Photograph of two-story building, located at 1327 38th Street, Brooklyn, N. Y. (marked into evidence at fol. 110 and fol. 135) 177
2. Photograph of same two-story building with folding iron gate in front (marked into evidence at fol. 111) 179
3. Photograph showing the entrance from the door into the garage and the three steps entering into the shipping room (marked into evidence at fol. 162) 181
4. Photograph showing the same three steps from a different view and showing the entrance into the shipping room directly from those three steps, with the door leading into that room (marked into evidence at fol. 165) 183
5. Photograph showing back of the building and also the coal yard (marked into evidence at fol. 190) 185
6. Photograph of room showing chair (marked into evidence at fol. 218) 187

New York Supreme Court

APPELLATE DIVISION—SECOND DEPARTMENT

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

—against—

LOUIS LOFFREDO, ANTHONY BRUNO and
DOMINICK CARLUCCI,

Appellants.

Statement Under Rule 234

This is an appeal by the appellants from a judgment of conviction rendered against Louis Loffredo and Dominick Carlucci on the 3rd day of September 1947 and rendered against the defendant, Anthony Bruno on the 12th day of September 1947 in the County Court of Kings County, City and State of New York of the crimes of Robbery First Degree, Grand Larceny First Degree and Assault Second Degree.

Trial was had before the Honorable Samuel S. Leibowitz, Justice of the County Court and a Jury on May 26 and 27, 1947.

Louis L. Loffredo, Anthony Bruno and Dominick Carlucci were sentenced by the Court to be imprisoned in the State Prison at Sing Sing, at hard labor, under an indeterminate sentence, the maximum of such imprisonment to be for the term of sixty (60) years and the minimum thereof thirty (30) years.

The defendants are represented by Abraham H. Brodsky, Esq. The People are represented by Hon. Miles F. McDonald, Esq., District Attorney of Kings County.

There has been no change of parties or attorneys.

2

Notice of Appeal

COUNTY COURT
OF THE COUNTY OF KINGS

4

THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiffs,

—against—

LOUIS LOFFREDO, ANTHONY BRUNO and DOMINICK
CARLUCCI,*Defendants.*

- 5 To the Clerk of the County Court of the County
of Kings and to Miles F. McDonald, District
Attorney of the County of Kings:

S I R S :

- PLEASE TAKE NOTICE that the defendants herein
hereby appeal to the Appellate Division of the
Supreme Court, Second Department, from the
judgments of conviction rendered against the de-
fendants, Louis Loffredo and Dominick Carlucci,
in this Court on the 3rd day of September, 1947
and rendered against the defendant, Anthony
Bruno, on the 12th day of September, 1947 in this
6 Court, and from each and every part of the said
judgment.

Dated: Brooklyn, New York,
September 19, 1947.

Yours, etc.,

ABRAHAM H. BRODSKY

Attorney for defendants

Office & P. O. Address

111 Broadway

New York (6) N. Y.

3

Information re Louis Loffredo

COUNTY COURT

KINGS COUNTY

(1941 & 1943 of the Penal Law) relative to
Indictment No. 842/1947

Filed: April 23, 1947

THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiffs,

—against—

LOUIS LOFFREDO,

Defendant.

THE DISTRICT ATTORNEY OF THE COUNTY OF
KINGS, by this information accuses the above-
named defendant of one certain previous conviction
of a crime and felony prior to the commission
by and conviction of this defendant on or about
May 27, 1947, before the Honorable Samuel S.
Leibowitz, a judge of said court, of the crime and
felony of Robbery in the 1st degree, Grand Larceny
in the 1st degree and Assault in the 2nd
degree, of which he now stands convicted after
trial, under indictment No. 842/1947, filed in this
Court, April 23, 1947, which said previous conviction
of a felony is as follows:

The said defendant, on and about August 14,
1934, in this Court, before the Honorable George
W. Martin, a County Judge of Kings County, was
duly by law convicted upon his own confession
and plea of guilty of the crime of Robbery in the

4

Information re Louis Loffredo

- 10 third degree, unarmed, under the name of Louis Loffredo, and was thereupon sentenced to imprisonment in the New York State Reformatory, at Elmira, there to be dealt with according to law.

MILES F. McDONALD
District Attorney

Brooklyn, N. Y., June 6, 1947.

11

12

5

Endorsement on Information

Defendant herein personally appears with Abraham H. Brodsky his counsel for arraignment upon the within Information accusing said defendant of having been previously convicted of the crime set forth therein. The within Information read to the defendant. He was then advised by the Court of his right to be tried as to the truth thereof according to law. Upon being asked if he is the same person mentioned in the several records therein, the defendant stated yes. Upon being asked if he was so convicted and sentenced as alleged therein, he stated yes. Whereupon the Court Adjudged the defendant to be a second felony offender. Defendant waives notice of sentence.

Judge: SAMUEL S. LEIBOWITZ
(1)

15

6

Information re Anthony Bruno

COUNTY COURT

KINGS COUNTY

(1941 & 1943 of the Penal Law) relative to
Indictment #842/1947

Filed: April 23, 1947.

THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiffs,

—against—

ANTHONY BRUNO,

Defendant.

16

17

18

THE DISTRICT ATTORNEY OF THE COUNTY OF KINGS, by this information accuses the above-named defendant, of one certain previous conviction of a crime and felony prior to the commission by and conviction of this defendant on or about May 27, 1947, before the Hon. Samuel S. Leibowitz, a judge of said court, of the crime and felony of Robbery, first degree, Grand Larceny first degree and Assault 2nd degree, of which he now stands convicted by the verdict of a jury under indictment #842/1947, filed in this Court, April 23, 1947, which said previous conviction of a felony is as follows:

The said defendant, on or about July 17, 1946, in this Court, before the Honorable Nathan R. Sobel, a County Judge of Kings County, was duly by law convicted upon his own confession and plea of guilty of the crime of Robbery in the first

RECORDED
INDEXED
16-1947

7

Information re Anthony Bruno

degree, under the name of Tony Bruno, and was
thereupon sentenced as follows: 19

ORDERED AND ADJUDGED by the Court that the
said Tony Bruno for the felony aforesaid, where-
of he is convicted, be imprisoned in the State
Prison at Sing Sing, at hard labor, under an in-
determinate sentence: the maximum of such im-
prisonment to be fifteen years and the minimum
thereof ten years.

IT IS FURTHER ORDERED BY THE COURT that the de-
fendant be credited with all time spent in jail 20
prior to conviction and before sentence, and with
all time spent in prison pursuant to the original
sentence of June 19, 1931, and with all time spent
in transporting defendant from and to prison and
while in jail awaiting this resentence and with
any time he may be entitled to be reason of any
law relating to compensation or commutation.

And the said defendant, on and about June 30,
1939, in this Court, before the Honorable Bertram
E. Harcourt, County Judge of Orleans County,
Acting in and for Kings County, was duly by law 21
convicted by the verdict of a jury of the crime
of Attempted Burglary, third degree, under the
name of Anthony Bruno, and was thereupon sen-
tenced as follows:

IT IS ORDERED AND ADJUDGED BY THE COURT, that
the said Anthony Bruno, for the felony aforesaid
whereof he is convicted, be imprisoned in the
State Prison at Sing Sing, at hard labor, for the
term of five (5) years; and it is further

*Information
sent to Supreme Court*

8

Information re Anthony Bruno

22 ORDERED BY THE COURT that the execution of said sentence be and the same hereby is suspended during the good behavior of the said Anthony Bruno. Probation.

MILES F. McDONALD
District Attorney

Brooklyn, N. Y., June 9, 1947.

23

24

9

• Endorsement on Information

Sept. 3, 1947.

25

Defendant herein personally appears with Abraham H. Brodsky his counsel for arraignment upon the within Information accusing said defendant of having been previously convicted of the crime set forth therein. The within Information read to the defendant. He was then advised by the Court of his right to be tried as to the truth thereof according to law. Upon being asked if he is the same person mentioned in the several records therein, the defendant stated yes. Upon being asked if he was the so convicted and sentenced as alleged therein the defendant stated yes. Whereupon the Court Adjudged the defendant to be a third felony offender. 26

Defendant remanded to Bronx County Jail.

Judge: SAMUEL S. LEIBOWITZ.
(1)

27

Information re Dominick Carlucci

COUNTY COURT

28

KINGS COUNTY

(Sections 1941 and 1943 of the Penal Law) relative
to Indictment #842/1947

Filed: April 23, 1947

THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiffs,

—against—

29

DOMINICK CARLUCCI

Defendant.

30 THE DISTRICT ATTORNEY OF THE COUNTY OF
KINGS, by this information, accuses the above-
named defendant of one certain previous conviction
of a crime and felony prior to the commission
by and conviction of this defendant on or about
May 27, 1947, before the Honorable Samuel S.
Leibowitz, a judge of said court, of the crime and
felony of Robbery in the first degree, Grand Larceny
1st degree and Assault in the second degree,
of which he now stands convicted after trial, under
indictment No. 842/1947, filed in this Court,
April 23, 1947, which said previous conviction of a
felony is as follows:

That the said defendant, on and about November 5, 1934, in this Court, before the Honorable Franklin Taylor, a County Judge of Kings County, was duly by law convicted upon his own con-

Information re Dominick Carlucci

fession and plea of guilty of the crime of Attempted Robbery Second Degree, unarmed, under the name of Dominick Carluccio, and was thereupon sentenced to imprisonment in the New York State Reformatory, at Elmira, there to be dealt with according to law. 31

MILES F. McDONALD
District Attorney

Brooklyn, N. Y., June 6, 1947.

32

33

Endorsement on Information

- 34 Defendant herein personally appears with Abraham H. Brodsky his counsel for arraignment upon the within Information accusing said defendant of having been previously convicted of the crime set forth therein. The within Information read to the defendant. He was then advised by the Court of his right to be tried as to the truth thereof according to law. Upon being asked if he is the same person mentioned in the several records therein, the defendant stated yes. Being asked if he was so convicted and sentenced as alleged therein, the defendant stated yes. Whereupon the
- 35 Court adjudged the defendant to be a second felony offender. Defendant waives notice of sentence.

Judge: SAMUEL S. LEIBOWITZ
(1)

13

Minutes of Presentment

At a term of the County Court, held in
and for the County of Kings, at 120 37
Schermernhorn Street, in the Bor-
ough of Brooklyn, City of New York,
on the 23rd day of April, 1937.

Present:

HON. LOUIS GOLDSTEIN
County Judge.

THE PEOPLE OF THE STATE OF NEW YORK

—against—

38

LOUIS LOFFREDO
ANTHONY BRUNO
DOMINICK CARLUCCI

842/1947

Proclamation made and court opened.

The Grand Jury comes in to court and presents
an indictment against the following named defen-
dants for the crimes set opposite their names:

Louis Loffredo	All three indicted for Rob-	39
Anthony Bruno	bery 1st degree, Grand Lar-	
Dominick Carlucci	ceny 1st degree, Assault,	
842/1947	second degree.	

A true extract from the minutes.

FRANCIS J. SINNOTT
Clerk.

14

Minutes of Arraignment

40

At a term of the County Court, held in
and for the County of Kings, at 120
Schermerhorn Street, in the Bor-
ough of Brooklyn, City of New York,
on the 28th day of April, 1947.

Present:

HON. LOUIS GOLDSTEIN
County Judge.

41

THE PEOPLE OF THE STATE OF NEW YORK

—against—

LOUIS LOFFREDO
ANTHONY BRUNO
DOMINICK CARLUCCI

42

Proclamation made and court opened.

The following named defendants personally ap-
peared and were advised by the Court of their
rights pursuant to Section 308, C. C. P., and were
then arraigned to plead to indictments found
against them for the crimes set opposite their
names.

9/352B	J. Louis Loffredo	All three indicted for Robbery, 1st degree Grand Lar- ceny, 1st degree, Assault, 2nd de- gree.
	J. Anthony Bruno	
	J. Dominick Carlucci	

15

Minutes of Arraignment

All three plead—not guilty.

Bail \$50,000—on each.

All three remanded.

43

GEORGE W. MARTIN, Esq.,
Attorney for all three.

A true extract from the minutes.

FRANCIS J. SINNOTT
Clerk.

44

45

16

Indictment

COUNTY COURT
OF THE COUNTY OF KINGS

THE PEOPLE OF THE STATE OF NEW YORK

Plaintiffs

—against—

LOUIS LOFFREDO
ANTHONY BRUNO
DOMINICK CARLUCCI*Defendants*

FIRST COUNT

THE GRAND JURY OF THE COUNTY OF KINGS, by this indictment, accuse the defendant of the crime of ROBBERY IN THE FIRST DEGREE, committed as follows:

The defendants, on or about December 12, 1946, in the County of Kings, unlawfully took a quantity of United States currency and Bonds, all of a total value of more than five hundred dollars, from the possession of and in the presence of Vincent Di Bari, against his will, by means of force and violence and fear of immediate injury to his person, each of the above named defendants being actually present at the time and each aiding the other; and the above named defendant, Louis Loffredo, being armed at the time with a dangerous weapon, to wit, a firearm.

17

Indictment

SECOND COUNT

49

THE GRAND JURY OF THE COUNTY OF KINGS, by this indictment, accuse the defendants of the crime of GRAND LARCENY IN THE FIRST DEGREE, committed as follows:

The defendants, on or about December 12, 1946, in the County of Kings, in the night time, stole and took from the possession of Vincent Di Bari, a quantity of United States currency and Bonds, all of a total value of mor than five hundred dollars, owned by Gus Cirillo, Monica Domenica Cirillo, Costantino Cirillo, Nicholas W. Cirillo, William J. Cirillo, and Cirillo Brothers Coal & Fuel Corporation, with the intent to deprive the owners thereof, and of the use and benefit thereof, and to appropriate the same to the use of the defendants.

50

THIRD COUNT

THE GRAND JURY OF THE COUNTY OF KINGS, by this indictment accuse the defendants of the crime of ASSAULT IN THE SECOND DEGREE, committed as follows:

51

The defendants, on or about December 12, 1946, in the County of kings, with intent to commit the crimes of robbery and grand larceny, wilfully and wrongfully assaulted Vincent Di Bari.

MILES F. McDONALD
District Attorney.

18

Endorsement on Indictment

52 No. 842/1947

9/352-B

THE PEOPLE

vs.

J.

LOUIS LOFFREDO

J.

ANTHONY BRUNO

J.

DOMINICK CARLUCCI

53

ROBBERY FIRST DEGREE
 GRAND LARCENY FIRST DEGREE
 ASSAULT SECOND DEGREE

INDICTMENT

A True Bill

LEON ALEXANDER

Foreman

MURRAY F. McDONALD
 District Attorney

54

All
 Pleads Not Guilty April 23, 1947

Bail \$50,000. each
 all remanded.

Judge GOLDSTEIN (1)

A.D.A. MOOREHEAD.

Filed April 23, 1947

- indictment filed

19

Endorsement on Indictment

(TRIAL)

8

all 3

55

Tried—Part 2—May 21, 22

Judge GOLDSTEIN

A.D.A. NIAS

Verdict Mistrial declared as to all three, with
consent of both sides.

all 3 remanded.

GOLDSTEIN, J. pt. 2. 5/22/47

56

(TRIAL)

All three Defendants remanded to Queens)

5/29/47

Part 3—May 26, 27, 1947

Judge LEIBOWITZ

A.D.A. HELFAND

VERDICT: All defendants guilty as
charged—Remanded

Loffredo: Kings co. Jail

57

Bruno & Carlucci: Queens Co. Jail

Jury Polled.

All three

Defendants personally appears and advised by
the Court of their rights pursuant to Section 308,
C.C.P. Have you a lawyer? YesName of Lawyer Geo. W. Martin
16 Court St. Bklyn. for all three.
present

20

Endorsement on Indictment

Name Louis Loffredo

Color White

Age 31 Nativity New York City

Residence 1804 76th St.
B'klyn

Occupation Longshoreman

Mechanical Trade none

Married Yes

Read and Write Yes

59 Degree of Education 6th Grade Public School

Religion Roman Catholic

Degree of Religious Instruction Irregular

Parents Living Father Living

Temperate

Drugs No

Previous Conviction one F. none M.

Sentence Sing Sing State Prison

Maximum: Sixty (60) years

60 Minimum: Thirty (30) years

Judge SAMUEL S. LEIBOWITZ

Date Sep. 3, 1947

(Hold commitment till further
order of the Court)

21

Endorsement on Indictment

True Name Anthony Bruno

61

Male Color White

Age 33 Nativity Erie, Pa.

Residence None

Occupation Laborer

Mechanical Trade.....

Married No

Read and Write Yes

Degree of Education P.S. 2 A

62

Religion Catholic

Degree of Religious Instruction Regular

Parents Living Mother Living

Temperate

Drugs No

Previous Conviction 1 F. 3 M.

Sentence State Prison, Sing Sing

Maximum: Sixty Years

Minimum: Thirty years

63

Execution of Sentence stayed
until further order of CourtDefendant to be returned
whence he came.

Date LEIBOWITZ, J. Sept. 12, 1947

Endorsement on Indictment

- 64 Name Dominick Carlucci
Counsel Retained
Sex: Male. White
Age 34
Nativity New York City
Residence 183 Mulberry St., N.Y.C.
proprietor
Occupation Pet Shop
Mechanical Trade none
Married: No.
Read and Write: Yes.
- 65 Degree of Education 5th Public School
Religion Roman Catholic
Degree of Religious Instruction irregular
Parents Mother Living
Temperate.
Drugs: No
Previous Conviction. one felony—
no misdemeanors
Sentence. Sing Sing State Prison
Maximum: Sixty (60) years
Minimum: Thirty (30) years
- 66 (Do not issue commitment until
ordered by Court).
Judge: SAMUEL S. LEIBOWITZ (1)
Sep. 3, 1947.
Sep. 3, 1947 Each defendant arraigned on in-
formation (sec. 1941 & 1943 P.L.)
See informations (3).

SAMUEL S. LEIBOWITZ, J. (1)

Minutes of Sentence of Louis Loffredo

At a term of the County Court, held in
and for the County of Kings, at 120
Schermernhorn Street, in the Borough
of Brooklyn, City of New York, on
the 3rd day of September 1947 67

Present:

HON. SAMUEL S. LEIBOWITZ
County Judge.

THE PEOPLE OF THE STATE OF NEW YORK

68

against

LOUIS LOFFREDO

Indicted for Robbery first degree, Grand Larceny
first degree, Assault second degree and convicted
as charged by the verdict of a jury.

Being personally present and sworn says: My
true name is Louis Loffredo, I am 31 years of age;
I was born in New York City; I reside at 1804
76th Street, Brooklyn, N. Y.; I am a longshore-
man; I am married; I can read and write; I have
a 6th grade public school education; I am a Roman
Catholic, irregular attendant; my father is living;
I am temperate; I do not use drugs; I have pre-
viously been convicted of one felony offense. 69

Arraigned on an Information dated June 6, 1947,
alleging a prior felony conviction, and duly ad-
vised as to his rights by the Court, the defendant
admitted he was the same person mentioned in the

Minutes of Sentence of Louis Loffredo

70 several records and was the same person so convicted and so sentenced as alleged therein.

Adjudged by the Court to be a second felony offender.

Being asked and he having nothing to say why the judgment of the law should not be pronounced against him, the Court pronounced judgment as follows:

71 Whereupon it is Ordered and Adjudged by the Court that the said Louis Loffredo, for the felonies aforesaid, whereof he is convicted, be imprisoned in the State Prison at Sing Sing, at hard labor, under an indeterminate sentence, the maximum of such imprisonment to be for the term of sixty (60) years and the minimum thereof thirty (30) years.

A true extract from the minutes.

FRANCIS J. SINNOTT
Clerk.

25

Minutes of Sentence of Anthony Bruno

At a term of the County Court, held in
and for the County of Kings, at 120 73
Schermerhorn Street, in the Borough
of Brooklyn, City of New York, on
the 12th day of September 1947

Present:

HON. SAMUEL S. LEIBOWITZ
County Judge.

THE PEOPLE OF THE STATE OF NEW YORK

74

against

ANTHONY BRUNO

Indicted for Robbery first degree, Grand Larceny
first degree, Assault second degree and convicted
as charged by the verdict of a jury.

Being personally present and sworn says: My
true name is Anthony Bruno; I am 33 years of
age; I was born in Erie, Pa.; I have no residence;
I am a laborer; I am not married; I can read and
write; I have a 2A public school education; I am 75
a Catholic, regular attendant; My mother is living;
I am temperate; I do not use drugs; I have pre-
viously been convicted of one (1) felony and three
(3) misdemeanors.

Arraigned on an Information dated June 6, 1947,
alleging two (2) prior felony convictions, and duly
advised as to his rights by the Court, the defen-
dant admitted he was the same person mentioned

Minutes of Sentence of Anthony Bruno

- 76 in the several records and was the same person so convicted and so sentenced as alleged therein.

Adjudged by the Court to be a third felony offender.

Being asked and he having nothing to say why the judgment of the law should not be pronounced against him, the Court pronounced judgment as follows:

- 77 Whereupon it is Ordered and Adjudged by the Court that the said Anthony Bruno, for the felonies aforesaid, whereof he is convicted, be imprisoned in the State Prison at Sing Sing, at hard labor, under an indeterminate sentence, the maximum of such imprisonment to be for the term of sixty (60) years and the minimum thereof thirty (30) years.

A true extract from the minutes.

FRANCIS J. SINNOTT
Clerk.

Minutes of Sentence of Dominick Carlucci

At a term of the County Court, held in
and for the County of Kings, at 120 79
Schermershorn Street, in the Borough
of Brooklyn, City of New York, on
the 3rd day of September 1947

Present:

HON. SAMUEL S. LEIBOWITZ
County Judge.

THE PEOPLE OF THE STATE OF NEW YORK

80

against

DOMINICK CARLUCCI

Indicted for Robbery first degree, Grand Larceny
first degree, Assault second degree and convicted
as charged by the verdict of a jury.

Being personally present and sworn says: My
true name is Dominick Carlucci; I am 34 years of
age; I was born in New York City; I reside at
183 Mulberry Street, N.Y.C.; I am the proprietor 81
of a pet shop; I am not married; I can read and
write; I have a 5A public school education; I am
a Roman Catholic; irregular attendant; my mother
is living; I am temperate; I do not use drugs; I
have previously been convicted of one (1) felony.
Arraigned on an Information dated June 6, 1947,
alleging a prior felony conviction, and duly ad-
vised as to his rights by the Court, the defendant
admitted he was the same person mentioned in the

Minutes of Sentence of Dominick Carlucci

- 82 several records and was the same person so convicted and so sentenced as alleged therein.

Adjudged by the Court to be a second felony offender.

Being asked and he having nothing to say why the judgment of the law should not be pronounced against him, the Court pronounced judgment as follows:

- 83 Whereupon it is Ordered and Adjudged by the Court that the said Dominick Carlucci, for the felonies aforesaid, whereof he is convicted, be imprisoned in the State Prison at Sing Sing, at hard labor, under an indeterminate sentence, the maximum of such imprisonment to be for the term of sixty (60) years and the minimum thereof thirty (30) years.

A true extract from the minutes.

FRANCIS J. SINNOTT
Clerk.

Extract From Clerk's Minutes

At a term of the County Court, held in
and for the County of Kings, at 85
120 Schermerhorn Street, in the Bor-
ough of Brooklyn, City of New York,
on the 26 day of May 1947

Present:

HON. SAMUEL S. LEIBOWITZ
County Judge.

THE PEOPLE OF THE STATE OF NEW YORK

86

against

LOUIS ALFREDO
ANTHONY BRUNO
DOMINICK CARLUCCI

842/1947

Jointly indicted for Robbery First Degree,
Grand Larceny First Degree and Assault Second
Degree

Julius Helfand, Esq., Assistant District Attor- 87
ney

Abraham H. Brodsky, Esq., Defendants Attor-
ney

Ralph E. Roberts, Stenographer

The District Attorney moves this indictment
for trial, the court so ordered and the following

Extract From Clerk's Minutes

- 88 named trial jurors were duly drawn, empanelled, examined, accepted and sworn to try this issue:

William H. Redden	Max Kornreich
Olaf A. Naslund	Chester C. Smith
Horatio P. Michaels	Robert J. Bennett
Howard Decker	Ellis C. Liesenberg
John M. Cotter	George F. Hogan
Benjamin W. Cohen	Robert W. Blauth

- 89 Ordered by the court that an alternate juror be drawn pursuant to Section 358A Code Criminal Procedure

Whereupon the following named trial juror was duly drawn, empanelled, examined, accepted and sworn as an alternate juror:

John E. Harrington
Mr Helfand opens to the jury
Defendants waive opening

- 90 Peoples Witnesses:
- | | | |
|-----------------|-------|-----------------------|
| Gus Cirillo | Sworn | 1327—38 Street Bklyn |
| Peter Cirillo | Sworn | 210 Clinton Ave Bklyn |
| Vincent Di Bari | Sworn | 718—40 Street Bklyn |

Trial continued to Tuesday May 27, 1947

The Court ordered that the jury be taken to the Half Moon Hotel and that suitable accommoda-

31

Extract From Clerk's Minutes

tions be arranged for their lodgings for the night
of May 26, 1947 91

Whereupon the jury of thirteen jurors was
taken in charge by Capt. Gannon and Officers Hall,
Medwin and Greves who were first duly sworn,
to be lodged in said hotel; and further ordered
that the jury and officers be provided with break-
fast on May 27, 1947 at charges not to exceed
the regular and customary charges for lodgings
and breakfast to guests therein and that the same
be a county charge.

Defendants remanded 92

93

32

Extract From Clerk's Minutes

94

At a term of the County Court, held in
and for the County of Kings, at 120
Schermernhorn Street, in the Borough
of Brooklyn, City of New York, on
the 27 day of May 1947

Present:

HON. SAMUEL S. LEIBOWITZ

County Judge.

95

THE PEOPLE OF THE STATE OF NEW YORK

against

LOUIS LOFFREDO

ANTHONY BRUNO

DOMINICK CARLUCCI

842/1947

Jointly indicted for Robbery First Degree,
Grand Larceny First Degree and Assault Second
Degree

96

Julius Helfand, Esq., Assistant District Attor-
ney

Abraham H. Brodsky, Esq., Attorney for defen-
dants

Ralph E. Roberts, Stenographer

Trial continued from Monday May 26, 1947

All jurors heretofore duly sworn appear and
answer to the call of their names

33

Extract From Clerk's Minutes

Peoples Witnesses:

Vincent Di Bari Recalled

97

Harold A. O'Neill Sworn Shield #165 Bureau of
Criminal identification

John McNally Sworn Shield #219—66 Squad

Gus Cirillo Recalled

People Rest Defendants Rest

Defendants move to dismiss the indictment

Denied

Mr. Brodsky sums up to the jury

98

Mr. Helfand sums up to the jury

The Court charges the jury

The alternate juror was discharged by the court

The jury retires to deliberate in charge of Offi-
cers Hall and Medwin who were first duly sworn

The jury returns into court and in the presence
of the defendants and their attorney say that they
find Louis Loffredo, Anthony Bruno and Dom-
inick Carlucci guilty as charged (Robbery First
Degree, Grand Larceny First Degree and Assault
Second Degree) and so say they all.

Defendants move to set aside the verdict Denied 99

On motion of A. H. Brodsky, Esq., attorney for
the defendants the court directed that the jury be
polled.

Whereupon each juror was asked individually
if his verdict was guilty as charged as to each
defendant and each juror answered that that was
his verdict.

Defendants Remanded

A true extract of the minutes.

FRANCIS J. SINNOTT
Clerk

34

Testimony

COUNTY COURT
OF THE COUNTY OF KINGS
PART 3

100

Before:

HON. SAMUEL S. LEIBOWITZ,
County Judge, and a jury.

THE PEOPLE OF THE STATE OF NEW YORK,

against

101

LOUIS LOFFREDO,
ANTHONY BRUNO,
DOMINICK CARLUCCI,
*Defendants.*Indictment No. 842/1947,
Robbery in the First Degree,
Grand Larceny in the First Degree,
Assault in the Second Degree.

Brooklyn, N. Y., May 26, 1947.

102

Appearances:

Assistant District Attorney JULIUS HELFAND,
*for the People.*ABRAHAM H. BRODSKY, Esq.,
*for the defendants.*RALPH E. ROBERTS,
Official Stenographer.

Proceedings

(A jury of twelve was impaneled and sworn
and an alternate juror was selected and sworn as
directed by the court.) 103

(Mr. Helfand opened to the jury for the People.)

Mr. Brodsky: Defendants waive their opening.

The Court: Mr. Foreman and Gentlemen of the
Jury, the court is about to declare a recess for
luncheon. In the meantime do not discuss the case
among yourselves or with any other person, or
permit anyone to speak to you about this case or
discuss it in your presence. You must keep your
minds open. Do not form or express any opinion
or conclusion as to the guilt or innocence of the
defendants or either of them, until the case is
finally submitted to you. You may go now and
return at five minutes past two. Have the jury in
the box at that time. The defendants are re-
manded. The jury will remain seated until the
defendants have been removed from the court-
room. The defendants are remanded. Everyone
will remain seated until the defendants are out
of the room. 104

(Defendants removed from the room.) 105

The Court: Now the jury may go—follow the
officer, gentlemen.

Gus Cirillo—for People—Direct

AFTER RECESS. TRIAL RESUMED. 2:00 p.m.

106

GUS CIRILLO, residing at 1327 38th Street, Brooklyn, called as a witness in behalf of the People, being first duly sworn by the clerk, Mr. Pugliese, testified as follows:

Direct Examination by Mr. Helfand:

Q. Mr. Cirillo, what is your business, please?

A. Coal and fuel oil, and also ice manufacturers.

Q. Where is your place of business? A. 1327

107 38th Street.

Q. 38th Street, Borough of Kings? A. Yes, sir.

Q. County of Kings, rather, Borough of Brooklyn? A. Yes.

Q. How long have you been in business at that place? A. At that place there we have been in business since 1932.

Q. Before that you were in business somewhere else? A. Same line of business, that is right.

Q. Are you in business with a brother of yours, Peter Cirillo? A. That is right.

108 Q. Were you in that business on the 11th day of December, 1946? A. Yes, sir.

Q. At that same address, 1327 38th Street? A. That is right.

Q. What kind of a building do you occupy at that address? A. There is two floors to this building, first floor and second floor. One is on the first floor, the other one is on the second floor.

Q. Two-story building? A. One-story. We

37

Gus Cirillo—for People—Direct

have what we call a shipping room where we
have got a scale and we ship the coal out. 109

Q. I show you this photograph and ask you
whether that correctly represents that building
at that address, the two-story building that you
talk about (showing)? A. That is right.

Q. That is the building that you occupy and
conduct your business from, is that right? A.
Yes.

Mr. Helfand: I offer it in evidence.

Mr. Brodsky: No objection.

(Received in evidence and marked 110
People's Exhibit No. 1.)

By Mr. Helfand:

Q. I show you this photograph, Mr. Cirillo, and
ask you whether that correctly represents the
same building, showing an iron gate in front of
the building, and right adjacent to the window
which says "Coal"? A. That is right.

Q. That iron gate is a folding gate, is it not?
A. That is right.

Mr. Helfand: I offer this picture in
evidence, if the Court please. 111

Mr. Brodsky: No objection.

(Received in evidence and marked
People's Exhibit No. 2.)

Gus Cirillo—for People—Direct

By Mr. Helfand:

112

Q. This photograph, Mr. Cirillo, with the iron folding gate, is that the gate that is opened for the purpose of letting trucks enter the yard, coal yard? A. That is right.

Q. When one walks through that gate, where is the entrance to the shipping office and the regular office of the company? A. It is on the side.

Q. In the back of the yard? A. No; there is one entrance on the back yard and another one on the front.

113

Q. One in the front right near the gate? A. Yes.

Q. Then one would have to walk one flight up? A. That is in the other building to the left.

Q. One flight up? A. Yes.

Q. To the adjoining building on the left. And on December 11, 1946, were you in the building of your company? A. Yes.

Q. Did you have a safe in the building? A. Yes; we got a safe in one of the rooms and we got another safe downstairs.

114 Q. Where is the safe that is downstairs? A. It is in a small private room.

Q. The safe upstairs, where is that? A. That is in another small room.

Q. Is it an office room? A. An office room.

Q. Small office. What kind of a safe did you have there on that day? A. It is one of the Diebold safes; that is the name of the safe.

Q. That is the company that makes the safe? A. That makes the safe.

Gus Cirillo—for People—Direct

Q. About how big a safe is it? A. I will say it is high as that (indicating). 115

Q. Indicating about how many feet? A. I will say about four feet.

Q. About how wide was the safe? A. Oh, it is a square safe.

Q. Did you keep money in there that was the proceeds of business of a day? A. No; we only kept the money there for the night time after we made a deposit.

Q. Whatever comes in after the deposit, is left in the safe overnight? A. Overnight.

Q. On that day, December 11, 1946, did you put any money into the safe? A. Yes; the cash in the safe for seven hundred dollars—that was three o'clock in the afternoon—which we were supposed to give some Christmas gifts to our employees. I took that cash and put it in the safe. 116

Q. Seven hundred dollars in cash? A. In cash.

Q. You remember approximately what were the denominations of the bills? Was it in small amounts? A. In tens, twenty dollar bills.

Q. You yourself put that seven hundred dollars in the safe? A. That is right.

Q. Was it in an envelope? A. No; it was just a little band on that and I put it in the safe. 117

Q. In one of the compartments of the safe? A. In one of the compartments of the safe; that is right.

Q. At that time when you put the seven hundred dollars in the safe was there any other money in the safe? A. Well, probably, sometimes we got fifty or a hundred dollars for petty cash, something like that.

Gus Cirillo—for People—Direct

- 118 Q. What else was in the safe at the time you put the seven hundred dollars in cash in, and when there was this fifty dollars petty cash? Anything else of value? A. Yes; we had Government bonds, about nine thousand dollars in bonds.
- Q. Nine thousand dollars worth of United States Government bonds? A. United States Government bonds.
- Q. Were those the kind of bonds commonly known as War Bonds? A. Some of them they were War Bonds; some of them were coupon bonds.
- 119 Q. Negotiable bonds? A. That is right.
- Q. Can you tell us how much negotiable coupon bonds there were? A. One thousand.
- Q. A thousand dollars, and the balance was the so-called War Bonds? A. War Bonds.
- Q. To whom did they belong? A. To our family.
- Q. Some to you? A. Some to me.
- Q. Some to your brother Peter? A. Some to my brother Peter.
- Q. Other members of your family who were associated in your business? A. That is right.
- 120 Q. So that when you put the money into the safe there were these bonds in the safe, the fifty dollars in petty cash and seven hundred dollars cash you put there? A. Seven hundred dollars cash I put it.
- Q. About what time that day did you leave that place of your business? A. I left my business five or five-thirty.
- Q. Whom did you leave there when you left?

41

Gus Cirillo—for People—Direct

A. We had a cashier on hand; we also had different employees.

121

Q. Was your brother Peter there? A. Yes; my brother was in charge.

Q. Peter? A. My brother Peter.

Q. When you left, was your night watchman, Vincent DiBari, there? A. No.

Q. He was not there when you—

The Court: Look at the first count of the indictment—the second count and the third count—look at the date.

Mr. Helfand: 12/19/46. You are looking at the wrong indictment. We are trying No. 842, which superseded the one you are looking at.

122

The Court: But the date is correct?

Mr. Helfand: That is right. By a superseding indictment, amending it, No. 842.

The Court: I had the wrong document. Thank you for calling it to my attention.

Mr. Helfand: I called it to the attention of the clerk this morning when we mentioned the case. I meant to have called it to your attention.

The Court: Thank you.

123

By Mr. Helfand:

Q. Then you left the place? A. I left the place five o'clock.

Q. The next morning, December 12, 1946, did you have occasion to come back to your place of business? A. Yes; I did. I had a telephone call around three o'clock in the morning.

Gus Cirillo—for People—Direct

124 Q. Don't tell us what the call was. Who called you? Just the person or persons? A. I don't remember if it was the police department or the watchman.

Q. In any event, either the police or the watchman called you and you went back to your office? A. Went back to my place.

Q. What time did you get there? A. Around three o'clock in the morning.

Q. When you got there three o'clock in the morning did you examine the premises? A. Yes; I did.

125 Q. What was the first thing that you saw? A. First thing I saw I went upstairs, I saw paper all over the private room, and also the safe was all cracked.

Q. The safe was cracked? A. The door wide open.

Q. Where was the safe at that time? A. In the toilet room.

Q. Was it broken? A. It was all broken.

Q. Was the door on or off the safe? A. Part of it—no; the door was on, but it was all wide open, all busted up.

126 Q. All broken up? A. All broken up.

Q. That was in the toilet room? A. Yes.

Q. Not in the room where you had put the money? A. No; it was moved from there.

Q. Did you examine any of the doors to the place? A. Yes; we showed some of the police, when the detectives were there—I showed them where they forced that door that opened up.

Mr. Brodsky: I object to that.

The Court: Yes.

43

Gus Cirillo—for People—Direct

By Mr. Helfand:

127

Q. What did you see on the door? A. I saw a mark you see by the door.

Q. What kind of marks? How can you describe them? A. Somebody had bar or something that forced the door in.

Mr. Brodsky: Object to that.

The Court: Overruled.

Mr. Brodsky: Exception.

By Mr. Helfand:

128

Q. Did you notice anything about the front gate which is shown on People's Exhibit 2; that is, the folding gate? A. No; I did not.

Q. Now, was there any money in the safe when you saw it there that morning at three-thirty? A. No; there was nothing at all.

Q. Everything gone? A. Everything gone.

Q. Were the bonds there? A. No; no found the bonds.

Q. The seven hundred dollars you had put in? A. No cash at all.

129

Q. How about the fifty dollars in petty cash? A. No cash at all.

Q. That was gone, too? A. Yes.

Mr. Helfand: That is all of this witness.

The Court: Any cross-examination?

Mr. Brodsky: Yes, your Honor.

Gus Cirillo—for People—Cross

130 *Cross Examination by Mr. Brodsky:*

Q. Mr. Cirillo, in order to get up to the office upstairs, where the safe was located, on the 11th of December, 1946, you have to use the entrance from the left hand side of the lower floor, which is as shown on People's Exhibit 1 in evidence; is that correct (showing)? A. Yes; that is right.

Q. Now, People's Exhibit 1 in evidence, there is another door, is that right, leading from the driveway into a vestibule which leads into another lower floor office, is that correct? A. Yes.

131 Q. Then there is a vestibule in that lower right hand corner, is that correct? A. Yes; that is correct.

Q. In that vestibule there is no light, is that correct? A. In the vestibule? No; we use three lights there. It is one room.

Q. Will you please answer? A. No; there is no light there.

Q. No light in that vestibule, is that correct?

The Court: Is that the vestibule, Mr. Brodsky, which is shown on the right side of the picture as you look at it?

132

Mr. Brodsky: That is correct, Judge.

The Court: There is also an office on the left side of the picture?

Mr. Brodsky: Left side and the right side.

The Court: One on the left and one on the right.

Gus Cirillo—for People—Cross

By Mr. Brodsky:

133

Q. Will you look at this photograph, Mr. Cirillo, (showing), and tell me if that accurately represents your place of business; is that correct? A. That is right.

Mr. Brodsky: May I offer that in evidence, Judge?

The Court: It is the same as the other, isn't it?

Mr. Brodsky: Yes.

The Court: What is the point of duplicating it?

134

Mr. Brodsky: I mean the position is shown more clearly.

The Court: All right. Let us see the People's exhibit. Either of them shows the picture. Unless you insist, there is no point in duplicating the same picture.

Mr. Brodsky: All right.

The Court: Maybe Mr. Brodsky's picture is a larger picture. Suppose we substitute one for the other. I think this is the better picture that Mr. Brodsky has.

Mr. Helfand: All right.

135

The Court: We will substitute this as People's Exhibit 1, so we do not have too many pictures.

(Picture offered by Mr. Brodsky marked People's Exhibit No. 1).

By Mr. Brodsky:

Q. All right. In the office shown in the right hand corner of People's Exhibit 1 in evidence, Mr.

Gus Cirillo—for People—Cross

136 Cirillo, there is a garage, is that correct? A. Right behind that place there there is a garage inside, yes.

Q. In order to get into the garage from the office in the lower right hand corner shown on People's Exhibit 1, there is a door that leads directly into the garage, is that correct? A. That is right.

Q. Outside of the main entrance to the garage from the street? A. That is the main entrance. You mean the main entrance to the garage, is that it?

137 Q. No; there is one entrance from the street leading into the garage? A. That is right.

Q. Then there is a door in the office in the lower right hand corner shown on People's Exhibit 1, that leads right into the garage? A. Yes.

Q. That garage is a large garage, is it not? A. Yes; it is a large garage.

Q. You keep your trucks in that garage, do you? A. Yes.

Q. Approximately how many trucks do you use in the operation of your business? A. Altogether we use about sixty trucks.

138 Q. Are those trucks stored at night in the garage? A. Not all in that garage. We have got another garage besides that.

Q. How many trucks would you say you store on an average overnight in the garage shown on People's Exhibit 1 in evidence? A. Oh, I will say around thirty trucks.

Q. That garage runs there from 38th Street right to the railroad cut, is that correct? A. Yes.

Q. Now, this safe, Mr. Cirillo, that you were

Gus Cirillo—for People—Cross

talking about to us, that was located on the second floor, is that correct? A. Second floor; yes. 139

Q. Shown on People's Exhibit 1 in evidence? A. Yes.

Q. And exactly, Mr. Cirillo, will you tell us where it was kept? A. On this here room right on top of the loft.

Mr. Helfand: Let him mark it.

By Mr. Brodsky:

Q. Will you indicate, please? A. Right up here (indicating to the Court who marks the photograph). 140

By Mr. Brodsky:

Q. The only way to get upstairs, Mr. Cirillo, from the downstairs office, is from the office on the left hand side, is that correct? A. That is the main door to get out.

Q. You cannot go upstairs from the office on the right hand side? A. No; you cannot do it.

Q. There is a stairway leading upstairs from the office downstairs on the left hand side shown on People's Exhibit 1? A. Yes. 141

Q. This was an iron safe, Mr. Cirillo? A. That is right.

Q. Or steel safe? A. That I would not know. I will say steel. I would not know.

Q. It is a metal safe, is that correct? A. It is a metal safe.

Q. You say there were seven hundred dollars in currency there? A. Yes.

Gus Cirillo—for People—Cross

- 142 Q. Fifty dollars in petty cash? A. Petty cash.
Q. In the little compartment? A. Yes.
Q. Was there a barrier inside the safe? Was there a door inside the safe. Mr. Cirillo? A. Yes; there was an open part on the side, with a door and key. There is where I put the money in.
Q. Did you lock the door? A. I locked the door; I locked the both doors.
Q. Both doors were locked, is that correct? A. Yes; one was with the combination, the other with the key.
Q. The outside door with the combination? A. Combination.
- 143 Q. You turned the combination? A. That is right.
Q. Did you try the door?? A. Yes; I did.
Q. It was locked, and before you did that you closed the inner door? A. That is right.
Q. That inner door covers the entire inside compartment, the back? A. No; just part of it.
Q. A little compartment? A. Little compartment.
Q. That was locked? A. That was locked. The rest is open, the inside it is open.
Q. This little compartment was broken open, is that correct? A. That was broken open too.
- 144 Q. And when you got there the police were there? A. Oh, yes; they were there.
Q. When did you leave, Mr. Cirillo? A. I hung around there; I checked up the whole thing with the police—never went home at all.
Q. Did not go home? A. No.
Q. Stayed there? A. Stood there.

Gus Cirillo—for People—Cross

Q. Did the police take the safe with them? A. No. 145

Q. Left the safe? A. Left the safe; except they took the door along with them.

Q. Did they take the little door with them, Mr. Cirillo? A. No; they could not take that, no; they left that.

Q. Did they come down with powder and spread it about the safe? A. Yes.

Q. They did? A. That is right.

Q. They took fingerprint impressions? A. I suppose so.

Q. You saw that? 146

Mr. Helfand: I object to the question.

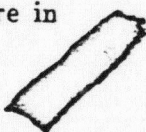
The Court: Mr. Brodsky's question is proper. He wanted to know if the police made an examination.

Mr. Helfand: He says he supposed so.

The Court: What difference does it make? Mr. Brodsky asked a very logical question, if the police came down there to try to get the fingerprints off the safe if it is possible to get them.

A. That is right. 147

The Court: Of course as to whether they got fingerprints off the safe depends on whether the fingerprints were on the safe. The police can give you that information—or as to whether they wore gloves. Whatever happened nobody knows. We are in the dark yet.



50

Gus Cirillo—for People—Cross

148

Mr. Brodsky: I respectfully except to your Honor's statement.

The Court: Your exception is noted. Proceed.

Mr. Brodsky: No further questions.

149

The Court: Gentlemen, we will take a little recess now. I am going—I have decided, in the exercise of my sound discretion, to put you up in a hotel tonight. We cannot finish this case tonight. I have decided to keep you together at a hotel. The case cannot be finished until tomorrow morning, sometime tomorrow afternoon, possibly. And this is something that I have done on my own motion. You must not imply anything unfavorable to either the defendants or the district attorney. It is not unusual to lock up a jury, as they call it in common parlance; and I will give you an opportunity to communicate with your homes during this short recess, so that you can have your toothbrushes and razors and pajamas brought down. I will have you home tomorrow. Don't worry about that. It is overnight. We will make it comfortable for you; probably put you up at a place where you will be in comfort, and it will facilitate the disposal of the case in this fashion. All right. We will take a fifteen minute recess now.

150

51

Peter Cirillo—for People—Direct

AFTER RECESS

151

TRIAL RESUMED

PETER CIRILLO, residing at 210 Clinton Avenue, Brooklyn, called as a witness in behalf of the People, being first duly sworn by the clerk, Mr. Pugliese, testified as follows:

Direct Examination by Mr. Helfand:

Q. Mr. Cirillo, are you a member of the firm of Cirillo Brothers Fuel & Coal Corporation? A. I am. 152

Q. What office do you hold? A. Vice-president.

Q. And the previous witness, Gus Cirillo, is your brother? A. Yes, sir.

Q. Now, on the 11th day of December, 1946, were you in your place of business at 1327 38th Street, County of Kings? A. I was.

Q. And sometime that day did you have occasion to go to the safe in one of the rooms of that building? A. I did.

Q. About what time of the day was that? A. That was seven, seven-thirty. 153

Q. At that time was the safe open or closed? A. It was closed.

Q. Did you have to open it by working the combination of the safe? A. I did.

Q. You were familiar with that? A. I was.

Q. When you opened the safe, was the inner door open or closed? A. It was closed.

Peter Cirillo—for People—Direct

- 154 Q. Did you open that with a key? A. No; I did not.
- Q. Did you open it at all? A. I had no occasion to use the inner door.
- Q. Did you put anything into the safe at that time around seven or seven-thirty on the 11th day of December? A. I put in the remains of the receipts for the day.
- Q. How much money was that? A. At the time I did not know how much it was, but upon inspection of the books the next day it was bound to be around thirty-five hundred dollars.
- 155 Q. In cash? A. In cash.
- Q. At that time did you notice whether or not there was in the safe any other money? A. I had known that there was other money in the safe.
- Q. Not what you knew; did you notice it, that is, in the safe at that time? A. No; because it was in a closed compartment which I did not have the key for.
- Q. Did you notice whether there were any bonds in the safe at that time? A. There were.
- Q. Were you familiar with those bonds? A. Yes, sir.
- Q. Did some of them belong to you? A. Three of them.
- 156 Q. Were those non-negotiable or negotiable bonds? A. Non-negotiable War Bonds.
- Q. Then there were some coupon bonds in there? A. There were.
- Q. In all, how much in bonds were there in the safe? A. About \$10,500.
- Q. What time did you leave the place after you had occasion to go to the safe? A. We left immediately after—

Peter Cirillo—for People—Direct

By the Court:

Q. Did you leave the safe open? A. No; it is closed.

157

By Mr. Helfand:

Q. Did you lock the front door to the safe?
A. It was locked.

Q. Threw the combination off? A. Right.

Q. Then you proceeded to leave the place? A.
That is right.

Q. Whom did you leave in the place at that time?
A. We left the watchman.

Q. What is his name? A. Vincent DiBari.

158

Q. Was he a regular watchman? A. No; he
was there for the night.

Q. He was a driver, was he not? A. That is
right; he was a relief watchman.

Q. The relief watchman that particular night?
A. He was working as a watchman; correct.

Q. Did you close any of the doors to the place
before you left? A. All the doors were closed.

Q. When you say all of the doors, which doors
do you refer to? For instance, I show you Peo-
ple's Exhibit 1, and you will notice that there is
a door to the left side of the photograph near the
window that is marked "Coal", another to the
right side where the garage is; is that right? A.
That is right.

159

Q. Were both of the doors locked? A. They
were.

Q. What kind of locks were on those doors? A.
I don't know the name of the locks but they are the
ordinary door locks that they have, with a handle,
on both those doors.

Q. Small locks? A. No; they are fairly large
locks.

Peter Cirillo—for People—Direct

- 160 Q. The padlock type? A. No; regular door.
Q. I don't know just what you mean when you say regular door. A. The conventional locks that they have on the doors, with the handle; the Yale locks, the Yale type locks.
Q. There was one on each door? A. Correct.
Q. Let me ask you this, please: Looking at People's Exhibit 1, in order to enter the building and to get into the garage part of the building from the outside, where would one enter? Which door?
A. The door to the right.
161 Q. When you say "to the right," do you mean the one that is even with the sidewalk or the one inside of the building line? A. You could either go through the one on the sidewalk and go through the office, down the staircase in the rear, or go through the yard, which is the one you are pointing at now.
Q. Either one you could go through the garage?
A. Right.
Q. And then in order to get to the shipping room on the same floor how would you go to that room?
A. If you used the yard door you would have to go up three steps into the shipping room.
162 Q. I show you this photograph and ask you whether this correctly represent the entrance from the door into the garage, and the three steps that you just mentioned, entering into the shipping room (showing)? A. That is it.

Mr. Helfand: I offer it in evidence, if the Court please.

Mr. Brodsky: No objection.

(Received in evidence and marked People's Exhibit No. 3).

53

Peter Cirillo—for People—Direct

Mr. Helfand: May this photograph be shown to the jury? 163

The Court: Show them both.

Mr. Helfand: This one I have just referred to—they might look at People's Exhibit 1 at the same time.

The Court: Yes.

(Pictures shown to the jury).

By Mr. Helfand:

Q. This photograph which the jury just looked at, People's Exhibit 3, which shows the door entering from the outside into the garage, and then three short steps into the shipping room; that is correct, is it not? A. Yes. 164

Q. As I have described it. Now, I show you this photograph, showing the same three steps from a different view, and ask you whether that correctly represents and shows the entrance into the shipping room directly from those three steps, with the door leading into that room (showing)? A. That is a true representation.

Q. In other words, if one were looking out from the shop to the garage from those three steps, that would be the view would be shown as represented on that picture? A. That is the view. 165

Mr. Helfand: I offer it in evidence.

Mr. Brodsky: No objection.

(Received in evidence and marked People's Exhibit No. 4).

Peter Cirillo—for People—Direct

By Mr. Helfand:

166

Q. Mr. Cirillo, People's Exhibit 4, which is the photograph showing the shop looking out into the garage, past the three steps; just what kind of a room is that? Can you describe it to us approximately, first in size and what it contains? A. The room is about 15 by 12 approximately, or thereabouts, and the shipping space itself is partitioned off by a counter, leaving a room about 12 by 12 square.

167

Q. And that is shown on this photograph, People's Exhibit 4, is it not, this counter that you are talking about? A. That piece of counter there is the end of the room.

Q. Small counter and a sort of a grill cage, cage with grill work? A. Correct.

Q. And a glass partition above the grill? A. That is right.

Q. So that from the counter to the entrance of the door at the steps, you say that is approximately 12 feet? A. It would be about that.

Q. And the room itself at that point, about 12 feet wide, sort of a square room? A. Correct.

168

Q. What kind of lights—lighting was there in this shipping room that you talk of, as shown on People's Exhibit 4? A. In that room it is partitioned off by the counter. There are two lights.

Q. Describe those to us, please. A. They are hanging lights with a frosted glass bottom to it.

Q. And what kind of bulbs are used in those globes? A. We use about 150 watt bulbs.

Mr. Brodsky: Object to that. He said "about."

A. 150 watt bulbs.

Peter Cirillo—for People—Direct

172 Q. And then you left the building after seeing that the doors were closed? A. Correct.

Q. And locked. About what time if at all did you return to the building? A. I did not return until the following morning, when I received a telephone call to go to the office, that it had been burglarized. That was about six o'clock in the morning. I got to the office about six-thirty the following morning.

Q. When you got there did you observe the condition of any of the doors to the building? A. I noticed that the doors had been jimmied open.

173 Q. Which doors are you talking about? A. The door leading into the main office upstairs had been forced open.

Q. This is shown on People's Exhibit 1, is that the door to the left or the one to the right? A. No; the door upstairs in that upper building, upper portion of that building, forming an L-shape.

Q. I see the one inside? A. No; upstairs.

Q. Upstairs leading to the one that you have marked? A. Leading to that office.

Q. Where the safe was? A. No.

174 Q. Show us then on the picture, so that we will not be guessing at it. A. On this building here (showing), here is a staircase that you enter through this door; and at the top of the staircase there is a door which closes off—that is what we call the general office upstairs. That had been jimmied open.

Q. How about the window on that side of the building? A. The window at the bottom.

Q. Was there any evidence of that having been broken? A. No; not on the upstairs.

57

Peter Cirillo—for People—Direct

By Mr. Helfand:

169

Q. Are those clear or frosted bulbs? A. Clear bulbs.

Q. 150 watt clear bulbs. Now, on this photograph, People's Exhibit 4, am I correct in saying that one of those lamps is shown directly above the glass partition about opposite the entrance door? Will you look at it, please, and if so mark it. A. (Shows to the Court who marks) Just that side of the partition—there is one you cannot see.

Q. Now, Mr. Cirillo, may I direct your attention, please, to an electric wire which is shown suspended from the ceiling, and the lamp, the glow of a lamp which is directly behind the partition, and ask you whether or not there wasn't another light right there at that point, with a globe and 150 watt lamp, directly opposite the entrance door? A. There is.

170

Q. That is what I wanted you to mark. A. (Shows to the Court who marks).

Mr. Helfand: The globe itself is right about behind the partition. Does your Honor see the suspension from the wall? Will you mark that, please, too?

171

(Court marks).

By Mr. Helfand:

Q. When you left at about seven-thirty, you told us that you left Mr. Vincent DiBari, your relief watchman, there? A. That is correct.

Q. At that time was he in this shipping room shown on People's Exhibit 4? A. He was.

Peter Cirillo—for People—Cross

Q. Not upstairs? A. Downstairs the window was open. 175

Q. Did you see the safe? A. I did.

Q. Where was the safe when you saw it? A. The safe was in the bathroom on top of a cushion which belonged to one of the sofas there, which had been—the door had been pried open and all the papers strewn all over the bathroom, same as the private office inside.

Q. Was there any money in the safe when you examined it? A. No; there was not.

Q. Were there any bonds in the safe when you examined it? A. No, sir; there was not. 176

Q. Have you since recovered any of that money which you put into the safe, or the bonds which were in there when you locked the safe before leaving the premises? A. Nothing except the insurance indemnity that we received on the policy.

Mr. Helfand: I think that is all of this witness.

The Court: Any cross-examination?

Mr. Brodsky: Yes, Judge.

Cross Examination by Mr. Brodsky:

Q. Mr. Peter Cirillo, this shipping room that you have talked about, that is the same as the office that we have referred to as the office on the lower right hand side, on People's Exhibit 1 in evidence, is that correct? A. Correct. 177

Q. And you designate it as a shipping room? A. That is right.

Q. Now, then, to enter this shipping room there are two steps, is that correct? A. Correct.

Peter Cirillo—for People—Cross

By the Court:

178

Q. From the street? A. From the street side.

By Mr. Brodsky:

Q. Leading from the sidewalk into the office?

A. Correct.

Q. Then there is a vestibule, is there not? A. That is right.

Q. Which is partitioned off from the rest of the shipping room? A. That is correct.

179 Q. And in the vestibule there is no light whatever, is that correct? A. Not in the vestibule.

Q. Is my statement correct, sir, that there is no light whatever in the vestibule? A. There is no light in that portion of the room in the vestibule.

Q. Now, People's Exhibit 3, of course, the photograph, was taken in the day time, is that correct? A. Repeat the question, please.

Q. People's Exhibit 3, the photograph, was taken in the day time? A. I assume it was. I don't know. I was not there when they took the photo.

180

Mr. Helfand: It is not offered for the purpose of showing the light. That is shown on this picture.

Mr. Brodsky: Just the layout?

Mr. Helfand: It is the entrance room and the general layout.

The Court: Do you wish to wait for any further cross-examination about the layout of the premises?

Mr. Helfand: I think that is a wise suggestion, if your Honor please.

Vincent DiBari—for People—Direct

VINCENT DiBARI, residing at 718 40th Street, Brooklyn, called as a witness in behalf of the People, being first duly sworn by the Clerk, Mr. Pugliese, testified as follows: 181

The Court: I think we will clear the courtroom. Have everybody step out except the people in the jury box.

Direct Examination by Mr. Helfand:

Q. Mr. DiBari, how old are you? A. 38 years old.

Q. Are you married? A. Yes, sir. 182

Q. Wife and children? A. Yes, sir.

Q. On December 11, 1946, were you employed by the Cirillo Brothers Coal & Fuel Corporation? A. Yes, sir.

Q. How long had you been employed by them prior to that day, before that day? A. Oh, since 1931.

Q. Some fifteen years?

By the Court:

Q. Do you mean you worked for this one concern for fifteen years? A. Yes. Well, I worked in the Navy Yard from 1942 to 1945, then I went back to these fellows. 183

By Mr. Helfand:

Q. What kind of work were you doing for them? A. I was a chauffeur and a relief watchman one night a week.

Q. One night a week? A. That is right.

Vincent DiBari—for People—Direct

184 Q. On December 11, 1946, Wednesday night, was that your night for relief watchman? A. That is right.

Q. What time about did you go on duty at that time? A. About six p.m.

Q. And you were to stay on duty until when? A. The following morning.

Q. At what time? A. About six.

Q. Now, do you remember seeing Mr. Peter Cirillo leave the premises? A. Yes, sir.

Q. About what time did he leave? A. Oh, about seven-thirty or eight o'clock, something like that.

185 Q. When he left, where in the building were you? A. I was in the shipping department.

Q. I show you this photograph, People's Exhibit 4 in evidence, and ask you whether the room that is shown on that picture is the room that you refer to as a shipping room or shipping department (showing)? A. Yes; inside of this room is a shipping department.

Q. On this picture, while we are at it, these three steps leading from that room, lead into what part of the building? A. In the garage.

186 Q. And then, in order to go out into the street or the yard, would one have to walk through the garage? A. There is a way out through the garage, there is a way out through the side.

Q. Through the side of the building, but you would have to come down these three steps? A. That is right.

Q. You were in that room when Mr. Cirillo left, is that correct? A. That is right.

Q. Now, during the night after he left what did you do? A. After they left I checked on the locks of the doors to see if they were all closed.

Vincent DiBari—for People—Direct

Q. Did you find the doors closed or open? A. They were all closed. 187

Q. Were they locked with locks? A. That is right.

Q. You did that yourself, you checked them? A. Yes, sir.

Q. And then after doing that did you come back to this room that you call the shipping clerk's office? A. That is right.

Q. When you came back, did there come a time when your attention was attracted by anything in and about that building? A. About a little after twelve there was three rings on the phone. 188

Q. Twelve midnight? A. Yes.

Q. Where was the phone located? A. There is about six or seven phones in there all along the desks.

Q. And it was somebody ringing on one of the phones? A. That is right.

Q. And what did you do? A. I picked it up to answer it.

Q. What happened? A. I answered it. There was no answer on the other end of the line, so I hung the phone up.

Q. The phone rang, you answered it and no one answered on the other end? A. That is right. 189

Q. You hung up the phone—then what happened? A. Then I heard something in the yard.

Q. About how soon after you answered the phone? A. About five minutes.

Q. Tell us what you heard? A. I heard something in the yard, so I did not know what it was.

Q. Not so fast, please. You heard something in the yard. What yard are you talking about? A. In the coal yard.

Vincent DiBari—for People—Direct

190 Q. And the coal yard is the yard in back of the entrance to the building from the street, is that right? A. That is right.

Q. Would this be the back of the building and also the coal yard that you talk about (showing)?

A. Yes; that is the back of it.

Mr. Helfand: I offer that in evidence.

(Received in evidence and marked People's Exhibit No. 5).

By Mr. Helfand:

191 Q. Describe to us what it was that you heard coming from the coal yard. A. I heard some sound in the coal dust, sounded like steps, like somebody walking in the coal dust.

Q. And when one walks on that coal dust in the yard is there a crunching noise? A. Yes; you could hear it.

Q. You heard this noise as if someone was walking in the back yard? A. That is right.

Q. When you heard that, just where were you at the time? A. I was inside the shipping office there.

192 Q. That is the room shown on People's Exhibit 4, the one I just showed you, is that right? A. That is right.

Q. What did you do when you heard that noise in the yard? A. I wanted to go out and see what it was out there.

Q. Don't tell us what you wanted to do, tell us what you did do? A. Well, I removed the latch off the door and I was going to walk out to the yard, and there was three men facing me there.

Vincent DiBari—for People—Direct

Q. You talk about removing the latch from the door. Again looking, please, at People's Exhibit 4 in evidence, the door that you say you removed the latch from, is that the door which is shown open on this photograph (showing), is that the one you refer to? A. Yes; that is the one. 193

Q. That is the door that leads down those three steps? A. That is right.

Q. Now, before you removed the latch, was that door opened or closed? A. It was closed.

Q. What kind of a latch was on it? A. It is a slide latch.

Q. A sliding latch? Does the door open in or out when one opens it? A. It opens in. 194

Q. In towards the room? A. That is right.

Q. You went to that door, you say, after you heard the footsteps? A. That is right.

Q. You opened the latch? A. Right.

Q. Do you mean by that you slid the latch back? A. That is right.

Q. Then what did you do with the door? A. I had my hand on it and when I opened the door there was three men in front of me.

Q. So that you did not go out of the door or out of the room? A. No, sir.

Q. Did you walk down any of the steps? A. 195
No.

Q. You were right at the threshold of the door leading down to the steps? A. That is right.

Q. With the door open in? A. Yes.

Q. With your hand on the door? A. (No answer).

Q. You say as you did that there were three men right there? A. That is right.

Vincent DiBari—for People—Direct

196 Q. Where were they with respect to the door?
Were they at the door or down on the steps? A.
They were at the door.

Q. Now, as you opened the door in and you say
you saw these three men at the door, was the room,
this so-called shipping room that you were in,
light or dark? A. There was a light in there.

Q. Was it lighted? In other words, was the
light on or out? A. It was on.

Q. Look at People's Exhibit 4, please, and you
notice two lights have been marked in green ink.
Which of the two lights was on, or were both of
them on?

197 Mr. Brodsky: Object to that. The man
testified that one light was on.

The Court: Wait, please. We will find
out.

Mr. Brodsky: May I ask the district at-
torney not to lead the witness?

The Court: Yes.

A. There was one light on in the inner office, right
here (indicating).

198 *By Mr. Helfand:*

Q. Did you see the three men as they stood at
the door? A. Yes, sir.

Q. How close were you to these three men when
you opened the door in in this shipping room?
Show us, please, by standing up and asking the
court attendant and the other two officers who are
there—you stand up and show us where your
chair is, using that as the entrance door.

Vincent DiBari—for People—Direct

The Court: Let them stand inside of the jury room and let him stand here. This is the room where he was. . 199

Mr. Helfand: All right, then; we will use that entrance door. Step down, Mr. DiBari, please.

By Mr. Helfand:

Q. You stand at the threshold of the door leading into that room—stand where you are holding the door. A. Right here.

Q. Show us how close these three men or how far away. A. Right on top of the step there. 200

Q. Tell them to stand where you say they were. A. (Showing) About two foot.

Q. Right at the top step to the entrance? A. That is right.

Q. Were they facing you at the time? A. Yes, sir.

Q. Just before you opened the door in and found the three men at the entrance door, or at the top had there been any knock at the door? A. No, sir.

Q. Did anyone try to open the door? A. No, sir. 201

Q. Did you hear any noise at that door as if it were being opened? A. No, sir.

Q. Am I then correct in saying that you were the first one who opened the door at that time? A. I think so.

Q. You removed the latch, didn't you? A. That is right.

Q. And as you did that, you saw three men facing you right at the door? A. That is right.

Vincent DiBari—for People—Direct

202 Q. And do you see any of those three men in court here today? A. Yes, sir.

Q. Will you step down, please, from the witness chair and show us who those men are? Step down and come around. A. (The witness goes down, faces the defendants and says, "These three men.")

Q. Indicating the defendants in this case? A. That is right.

Q. All right, step back.

(The witness goes back to the witness chair.)

203 *By Mr. Helfand:*

Q. Did any of the three men whom you saw there at the door and whom you now point out as the defendants in this case, have anything on their face in the nature of a disguise? A. No, sir.

Q. Did any of them have anything in their hands? A. As I opened the door, one of them pulled out a revolver or a gun.

Q. Where did he pull it from? A. Out of his vest, or his hip here. I don't know where he had it, but he just pulled his hand out.

204 Q. You are indicating as if you went to your beltline, is that right? A. Yes.

Q. Which one of the defendants did that? A. Do you want me to name them now?

Q. Which one of the defendants did that? A.

The Court: Stand up.

(The defendant Loffredo rises.)

Vincent DiBari—for People—Direct

The Court: What is your name?
The Defendant: Louis Loffredo.

205

By Mr. Helfand:

Q. He is the man you say pulled out the gun?
A. That is right.

Q. Can you tell us what kind of a gun it was?
A. It was a small one. I don't know what kind of a gun it was. I know it was a small one.

Q. Was it a dull gun or a shiny gun? A. It was a dull gun.

Q. Small gun? A. That is right.

206

Q. When he pulled the gun out from his belt or waistline did he say anything to you? A. No; he told me to turn around and sit down, face the wall. ✓

Q. And when he pulled the gun out, where were the other two defendants? A. They walked around the side of him in back of the room there.

Q. They walked to the side of him? A. That is right.

Q. Now, are you able to tell us, Mr. DiBari, generally, from your observation, or seeing the men, the defendants, at the door, at that time, how they were dressed? A. I could not tell you how two of them were dressed, but at the beginning, when they came in I could not tell you at all how they were dressed.

207

Q. Was there anything about their dress that you noticed? A. I was not looking at their dress.

Q. What were you looking at? A. At their faces. ✓

Q. Did you get a good look at the faces? A. ✓
Yes.

70

Vincent DiBari—for People—Direct

208

Mr. Brodsky: Object to that, if your Honor pleases.

(Loffredo makes some exclamation.)

The Court: Yes; that is leading.

By Mr. Helfand:

Q. You say you saw something about the dress of one of them that you noticed? A. At the end when they were finishing.

209 Q. Not before? A. No; I could not tell you anything.

Q. Then after the man told you to turn around, did you turn around? A. Yes, sir; I sat down.

Q. Where did you sit down? A. Right at the door.

Q. Was there a chair near the door? A. Yes, sir.

Q. On People's Exhibit 4 is shown a chair right near the door. Would that be about where you sat down? A. Yes.

210

Mr. Helfand: May the witness mark that place where the chair is shown at the door?

(Witness shows to the Court, who marks.)

By Mr. Helfand:

Q. What if anything did the defendants do when you sat down in the chair? A. After they tied me, they asked me how much money was in the place.

Q. What were you tied with? A. Piece of twine.

71

Vincent DiBari—for People—Direct

Q. Did you notice where they took the twine from? A. (No answer.) 211

Q. What part of your body was tied? A. My hands were in back of me.

Q. Hands in back of your back? A. That is right.

Q. Tied to the chair, or just your hands tied? A. No; just my hands tied.

Q. That is all? A. That is all.

Q. What were you then asked by the defendants? A. How much money was in the place.

Q. What was your reply? A. I said as far as I know there was no money in there. They asked me how do I know. Because I know they make night deposits. And one of them asked the other if this was the main office. They said "Yes." 212

Q. Do you know which one say "Yes" it was the main office? A. No, sir; I did not see them.

Q. Then what happened? A. I heard noises in the back of the room like they were opening drawers in there.

Q. When you heard noises in the back of the room as if drawers were being opened—withdrawn— Did the three men leave you there at the chair; or did anyone of them stay there with you? A. No; there was one behind me. 213

Mr. Brodsky: Object to the district attorney leading the witness.

The Court: Sustained.

By Mr. Helfand:

Q. What happened? Tell us what happened after your hands were tied with the twine behind

Vincent DiBari—for People—Dire.

214 your back? A. One of them stood with me. I know that he was in back of me. /

Q. What if anything did he do, the one that was in back of you? A. Well, he stood there in back of me.

Q. Did he say anything to you? A. He asked me if I wanted to smoke. He gave me a cigarette and he lit it for me.

Q. When that happened could you hear anything in the other part of the room? A. While I was sitting in the office I heard something being moved upstairs.

215 Q. Well, now, when you refer to the upstairs, is there a room directly above the shipping room? A. That is right.

Q. I show you People's Exhibit 1 in evidence, and point out on that photograph, please, the room that is directly above the shipping room and from which you say you heard certain noises and something being moved. A. (Indicating) That is the room.

Mr. Helfand: The room marked on the exhibit "safe in this room", if the Court please.

216 *By Mr. Helfand:*

Q. You say you heard something being moved? A. That is right.

Q. How long did that continue while you were sitting in this chair in the shipping room? A. Well, I stood there about ten or fifteen minutes. I don't exactly know how long. He then took me out of that chair and he took me outside in the garage there and sat me down on the chair.

73

Vincent DiBari—for People—Direct

Q. Who did that? A. I don't know. I did not see him. I was in front of him. 217

Q. One man. Did he say anything to you when he asked you to walk into the garage? A. He told me to move out.

Q. Move out? A. Out of the room.

Q. Did you move out? A. Yes, sir.

Q. In order to get into the garage, after you moved out of the shipping room, did you come down the three steps that are shown on People's Exhibit 3? A. That is right.

Q. And then would you then be in this room as shown on this photograph that I now hand you (showing)? A. That is where I was. 218

Q. The chair that is shown on that photograph, does that correctly show the position of that chair on that night that you were taken to? A. I was sitting facing that wall, yes. v

Q. On that chair? A. That is the chair.

Mr. Helfand: I offer it in evidence.

Mr. Brodsky: No objection.

(Received in evidence and marked People's Exhibit No. 6.)

By Mr. Helfand:

219

Q. When you sat down on this chair which is shown on this photograph, People's Exhibit 6, in the garage, what if anything was done to you? Were you just seated down in the chair? A. Yes; I was sitting down there. There was one fellow in back of me all the while. ✓

Q. After you sat down on the chair were you able to move about? A. No.

74

Vincent DiBari—for People—Direct

220 Q. What happened to you? A. I had to look at the wall.

Q. Had you been tied up? A. Yes, sir.

Q. You did not see them—who tied you up? ✓

Mr. Brodsky: Object to that, the district attorney telling the witness.

The Court: Sustained.

By Mr. Helfand:

221 Q. Who tied you up? A. I was tied up from the other chair. He did not take the twine off me. He just told me to walk down into that seat tied up.

Q. Were your hands still tied behind your back? A. That is right.

Q. While you were sitting in that chair did any of the defendants come over to the chair at any time? A. Yes.

Q. Who came over? A. I don't know. I did ✓ not see him.

Q. What if anything was done? A. He put a blanket over me because it was cold down there.

Q. Over what part of your body? A. My shoulders.

222 Q. What else was done? A. That is all I remember. There was one fellow walking in and out of the yard there like a spotter there. ✓

Q. Was walking in and out of the yard? A. Yes.

Q. Did he walk into the garage where you were? A. No; I did not see him, but I heard him walking on the coal dust out there.

Vincent DiBari—for People—Direct

Q. While you were sitting on this chair in the garage room with this blanket over your shoulders, were you tied at that time other than your hands? 223

A. No; just my hands were tied.

Q. Did anybody come to the chair and tie your feet? A. When they were through there; yes.

Q. What? A. When they were through with what they were doing, one of them came over and tied me more.

Q. Show us just what he did. A. He tied my hands with some more rope. Then he tied me around the legs. As he was doing it he covered himself up that I could not see. All I could see was his gray suit and the checkered cap he had on. 224

Q. Checkered cap? A. A pencilled cap, something like that. I know it was a gray cap.

Q. When you saw the three defendants at the door, did you notice at that time—did you notice at that time that either one of them was wearing a checkered or pencilled cap? A. No, sir; I don't remember that.

Q. Do you know which of the defendants it was who tied your feet up? A. Yes, sir.

Q. Which one? A. The one on the end. 225

Mr. Helfand: Which defendant is that? Carlucci?

The Court: Stand up, please.

(Carlucci stands.)

By Mr. Helfand:

Q. The defendant Carlucci? A. That is right.

76

Vincent DiBari—for People—Direct

226 Q. After you were tied around the legs, while you were sitting in this garage, did the three men then leave? A. Yes, sir.

Q. Did you hear anything? A. One of them stood outside the door and says, "You stay there. I will give you ten minutes to get away." So I sat there a while and when I heard a motor start up outside, I started releasing myself.

Q. Where did you hear the motor starting? A. In front of the garage, I guess. I don't know where the car was. I did not see.

Q. Outside the building? A. Yes.

227 Q. After you heard that you started to untie yourself? A. Release myself.

Q. Is that right? A. That is right.

Q. Did you untie yourself? A. Yes, sir.

Q. Then what did you do? A. I ran in the office and called the police.

Q. How soon after you called the police did the police come? A. Oh, about three or four minutes.

Q. Did you go into the upstairs room where the safe was before the police came? A. No, sir.

Q. Did you wait for the police to come? A. Yes.

228 Q. Do you remember Detective McNally? A. Yes, sir.

Q. Was he there with other police officers? A. That is right.

Q. Just yes or no: Did you talk to the Detective McNally at that time? Don't tell us what you said. Did you talk to him?

The Court: Just yes or no.

A. I guess—yes, sir.

77

Vincent DiBari—for People—Direct

By Mr. Helfand:

229

Q. And some of the other police officers? A. They all asked me questions.

Q. Later on, Mr. DiBari, some time in March, did you have occasion to go—

Mr. Brodsky: I object to the district attorney leading the witness, supplying the dates to the witness.

The Court: Overruled.

Mr. Brodsky: Exception.

Mr. Helfand: I withdraw that question.

230

By Mr. Helfand:

Q. When if at all did you next see any of the three defendants whom you have identified in the courtroom today? When was the next time? A. I think it was two days before Palm Sunday—on a Friday. I don't know if it was March or April the 4th. I know it was two days before Palm Sunday.

The Court: What date was that, please?

Mr. Helfand: Palm Sunday was April the 4th, I believe, or 5th.

231

The Clerk: The 6th.

By Mr. Helfand:

Q. A few days before Palm Sunday, is that right? A. That is right.

Q. Where did you go? A. Went to the 86th precinct on Fifth Avenue.

*ordered,
prosecution puts ID.
at showing*

Vincent DiBari—for People—Direct

232 Q. Fifth Avenue and where? A. And 86th Street.

Q. Do you remember what time of the day it was you went there? A. About three-thirty or four o'clock.

Q. In the afternoon? A. That is right.

Q. When you got there did you see any of the defendants there? A. Well, when I got there I was told to go in a room and look at these men.

Mr. Brodsky: I object to what he was told, if your Honor pleases.

The Court: Sustained.

233

By Mr. Hel'and:

Q. Don't say what you were told to do. Did you go into a room? A. Yes, sir.

Q. Did you see anyone there whom you knew in that room, whom you had seen before? A. There was three men in there.

Q. Who were those three men? A. The defendants.

Q. The defendants in this case? A. That is right.

234 Q. Did you identify them? A. Yes, sir.

Q. Did you say they were the three men? A. That is right.

Q. Were they the same three men whom you had seen in the Cirillo Brothers Coal Company on the night of December 11, 1946? A. Yes, sir. ✓

Q. Are they the same three men whom you have identified in this courtroom today? A. Yes, sir. ✓

Q. Did you see them again after that? A. I saw them up in the 66th precinct.

79

Vincent DiBari—for People—Direct

Q. Where is the 66th precinct? A. 49th Street
between 15th and 14th Avenue. 235

Q. About what time did you see them there?

A. I saw them up there about 12:30—after mid-
night it was.

Q. Did you identify them there to anyone?

Mr. Brodsky: I object to that.

A. Yes, sir.

The Court: Overruled.

Mr. Brodsky: Exception. 236

By Mr. Helfand:

Q. To whom?

Mr. Brodsky: I object to the form of the
question.

A. Assistant District Attorney Andreozzi.

By Mr. Helfand:

Q. When you identified them to Mr. Andreozzi,
were they the same three men whom you had seen
on the night of December 11th, at the Cirillo
Brothers Coal Company? A. Yes, sir. 237

Mr. Brodsky: Object to the question, if
your Honor please.

The Court: Overruled.

Mr. Brodsky: Exception.

*on direct
Prosecution
puts in 1. Dat
second showing*

Vincent DiBari—for People—Cross

238 *By Mr. Helfand:*

Q. Are they the same men whom you have identified today as the defendants in this case?

A. That is right.

Mr. Brodsky: Same objection.

The Court: Same ruling.

Mr. Brodsky: Exception.

Mr. Helfand: Your witness.

Cross Examination by Mr. Brodsky:

239 Q. Mr. DiBari, you say that you were in the office, in the shipping office at the time about twelve midnight, is that correct? A. That is right.

Q. Did you hear any automobile drive up to the place, Mr. DiBari? A. No, sir.

Q. You had been on duty from six p.m. that evening, sir? A. That is right.

Q. And this was after midnight, is that correct? A. That is right.

Q. Had you been drowsing, sir, had you been drowsing? A. I was listening to the radio in there.

240 Q. Had you taken any nap at all before midnight? A. Well, yes.

Q. Where? A. On the desk.

Q. Had taken a nap on the outer desk? A. Yes.

Q. Were you wearing your glasses, Mr. DiBari?

A. No, sir.

81

Vincent DiBari—for People—Cross

By the Court:

241

Q. When this happened, when these three men came to this door, just before that, what were you doing? Were you napping or were you listening to the radio? A. I answered the phone.

Q. Were you listening to the radio, napping or what were you doing at the time this happened? A. I was up.

Q. How long had you been up? A. Oh, about 10 minutes.

By Mr. Brodsky:

242

Q. How long had you been napping, about, Mr. DiBari? A. Oh, I was listening to the radio until about 10:30.

Q. Then you fell asleep? A. Yes, sir.

Q. You were asleep for about 10 minutes—when you heard the phone ring? A. The telephone ring.

Q. Had you taken off your glasses, Mr. DiBari? A. I had them off.

Q. You were not wearing your glasses at the time? A. No.

Q. Will you take off the glasses, please, Mr. DiBari. A. (The witness complies) 243

Q. What is the trouble with your eyes, Mr. DiBari? A. There is not much trouble with them. I get headaches if I don't wear the glasses.

By the Court:

Q. What colored suit is this defendant wearing, this first defendant? A. He has got a gray suit.

82

Vincent DiBari—for People—Cross

244 Q. What kind of a tie? A. Blue, pink and white.

Q. What kind of hair? A. Black.

Q. There is a man sitting a way over there in the rear of the courtroom, there, do you see him?

A. Yes, sir.

Q. Describe that man. A. He has got a blue suit on, blue tie, and a poppy in his lapel.

Q. What colored hair has he got? A. Black.

Q. Describe the man next to him. A. With a tan and gray sport jacket, with a yellow shirt, black hair and a poppy in his lapel there.

245 Q. Is there anything else on the poppy? A. Yes; there is a white cloth on the bottom of it.

The Court: All right; go ahead.

By the Court:

Q. What time is it? Look up at the clock. A. 4:30.

The Court: The clock is at the rear wall of the courtroom. Let the record show it is 4:31.

246 Mr. Helfand: Let the record show the distance from where the witness is to the wall.

The Court: You gentlemen agree it is about from 45 to 50 feet?

Mr. Brodsky: Agreed.

Mr. Helfand: May this all—

Mr. Brodsky: I object to this line of questioning by your Honor at this time.

The Court: All right.

Vincent DiBari—for People—Cross

Mr. Brodsky: Exception.

Mr. Helfand: May the record show that 247
the two men who were described by the
witness, were sitting in the third row from
the rear of the courtroom, approximately
some 35 or 40 feet from the witness chair.

The Court: Is it agreed, Mr. Brodsky?

Mr. Brodsky: It is agreed.

The Court: The reason why I ask these
questions is that it may be important for
me to rule on certain motions or on ques-
tions of law, and I want to satisfy myself
about certain things which are not bind- 248
ing at all on the jury. Sometimes the case
reaches a point where questions of law
arise. All right; proceed.

By Mr. Brodsky:

Q. You wear these glasses constantly, don't
you? A. I wear them for driving, wear them for
reading.

Q. Did you have a headache that night? A.
No; I usually take them off when I am not driv-
ing or reading.

Q. But you had just 10 minutes ago been 249
awakened from sleep, is that correct? A. That
is right.

Q. Were you still drowsy, Mr. DiBari? A. I
would not say that. I woke up fast enough.

Q. When you heard the telephone ring, is that
right? A. That is right.

Q. Were you still drowsy after you answered
the telephone? A. I don't know if I was drowsy.

Vincent DiBari—for People—Cross

250 I was awake enough when I answered the door there, I was awake.

Q. The door that you told us about, Mr. DiBari, that door leads to where? A. To the garage.

Q. To the garage proper, is that right? A. That is right.

Q. And that was the door that you opened? A. That is right.

Q. And the three people that you saw were standing where? A. Right on top of the door step.

251 Q. On the door step, is that right? A. That is right.

Q. Now, as you opened the door, you were standing right close to them? A. That is right.

Q. You were standing in the doorway, is that correct? A. I was inside the office.

Q. But in the doorway, is that correct? A. That is right.

Q. And the light was in back of you? A. That is right.

Q. And above you? A. What is that?

Q. And above you. A. There was no lights above me.

252 Q. In back of you? A. Yes, sir.

Q. How far in back of you was the light? A. About 20 feet.

Q. That was the only light burning? A. That is right.

Q. The garage was totally dark, is that so? A. No; it was not.

Q. Was not dark? A. No; there were lights in there.

Vincent DiBari—for People—Cross

Q. Where? A. Near the front of the garage. 253
They are always on at night.

Q. This was not in the front of the garage? A.
Well, you could see the trucks there.

Q. This was in the bend of the garage, is that
right? Looking at People's Exhibit 3 in evidence?

A. Well, right beside here is where the light
switch is.

The Court: Indicating on the left side
of the picture.

A. (continued) Right around here is a wall that 254
leads right to the light switch. There is a light
right in front of this—the length of the office. It
is only 20 feet, the office. There is a light by the
gas pump. It is on all night. You do not see it
in the picture—that wall there.

Q. It is a hanging light? A. There are lights
on the ceiling.

Q. The ceiling is pretty high? A. That is
right; yes.

Q. When these defendants stood there, did you
notice whether they had hats on? A. The first
man had a hat on.

Q. Was the brim of the hat down? A. It was 255
up.

Q. What do you mean, up? A. It was an up-
brim hat.

Q. Had a regular brim, did it, felt hat? A.
It was not down. It was a felt hat, though.

Q. How far down was the brim on his fore-
head? A. It was not down; it was up.

Q. Where was the brim on his forehead, the

Vincent DiBari—for People—Cross

256 brim of the hat? A. On the top of his head, on top of his forehead.

Q. The hat was setting on top of the forehead?

A. Where the fitting part of it fits on the head, it was right on top of his forehead.

Q. Would you take that hat please and demonstrate just where the hat was (handing a hat).

By the Court:

Q. Fix the brim just the way that brim was.

A. The brim of the hat was up like this.

257 The Court: Put it on the record.

By Mr. Brodsky:

Q. Is that hat a little small for you, sir?

Mr. Helfand: May the record indicate that the witness put a fedora hat on, showing the brim up-turned instead of turned down.

Mr. Brodsky: I object to the "instead of."

258 Mr. Helfand: It is up-turned. There are two ways that hat can be worn, brim down and brim up-turned.

A. (continued) I mean this part was not turned.

Mr. Helfand: The witness now shows the brim turned down.

The Court: He says that brim was not down.

87

Vincent DiBari—for People—Cross

Mr. Helfand: I say, he shows it was up-
turned. 259

By Mr. Brodsky:

Q. The hat was worn where the band is regularly—on the forehead—is that so, Mr. Di Bari?

A. Right.

Q. Is that so? A. Right.

Q. You say that the light in the office was 20 feet away? A. About that. I don't know just exactly how many feet it is.

260

By the Court:

Q. Show us in this room about how far away the light was from where you are sitting. Show us in the room here. A. From here about the end of that other—where the panel is on that wall.

Mr. Brodsky: Indicating a distance of about 20 feet.

The Court: About that.

Mr. Brodsky: Or more, Judge.

The Court: The jury can see it.

261

Mr. Helfand: All right. 18 to 20 feet.

By Mr. Brodsky:

Q. In the garage itself, Mr. DiBari, there were trucks all over, is that correct? A. Yes, sir.

Q. The place was filled with trucks, is that correct? The garage? A. That is right.

Q. Large trucks? A. That is right.

Vincent DiBari—for People—Cross

262 Q. They cast shadows all over the garage, did they not, Mr. DiBari? A. I don't know. I did not notice it.

Q. You did not notice it? A. No.

Q. Where with reference to the steps exhibited on People's Exhibit 3 in evidence would you say the nearest truck was? A. There was a truck right here.

Q. Right where? A. Right by in front of this closet.

Q. Will you indicate please and let his Honor put a mark there, if his Honor will, please. A.

263 There is a little service truck was there.

Q. How big was this truck, please? A. A half a ton service truck.

Q. How long was the body? A. About 10 feet.

Q. Now, you say the three men were close together? A. Yes, sir.

Q. You say one of the men wore a cap? A. Yes, sir.

Q. What kind of a cap did he wear? A. A pencil-striped gray cap.

Q. Did it have a peak, Mr. DiBari? A. Yes.

Q. Was the peak down? A. I did not notice.

264 Q. You did not notice whether the peak was down? A. No.

Q. The third man, what did he wear? A. I could not tell you what he wore.

Q. Did he wear a hat? A. I don't remember.

Q. Don't remember whether he wore a hat or not? A. No.

Q. You do remember that two of them wore hats? A. Yes, sir. He was standing directly in back of one of these fellows here. I did not see his suit. All I saw was his head.

Vincent DiBari—for People—Cross

Q. What part of his head did you see? A. Just his face. 265

Q. All you saw was his face? A. That is all.

Q. He was standing in back? A. Yes.

Q. And he was the furthest away from you?

A. The three of them were together.

Q. In a row? A. No; two in back and one in the front. ✓

Q. You say one of them took out a pistol, is that correct? A. That is right.

Q. Was the man who took out the pistol, was he wearing an overcoat? A. He had a topcoat on; yes. 266

Q. This was December 12th? A. That is right.

Q. It was a cold night? A. Yes.

Q. Was the collar of the topcoat turned up or down? A. I could not tell you; I did not notice.

Q. What about the second man? A. I did not notice his clothing at all.

Q. What about the third man? A. I did not see his clothing until after.

Q. Was he wearing a coat? A. No.

Q. No coat at all? A. No; just had a suit on.

Q. Just a suit? A. That is all.

Q. You had never seen these three men before, had you? A. When was that? 267

Q. You had never seen these three men in your life before, had you? A. No, sir.

Q. You did not know them? A. No.

Q. Total strangers to you? A. That is right.

Q. One of them took out a pistol? A. That is right.

Q. He put it to your back? A. No; in my stomach.

Vincent DiBari—for People—Cross

268 Q. Put it into your stomach, sir? A. While I was facing him.

Q. Show us how he did it, Mr. DiBari.

(The court attendant hands the witness a revolver.)

By the Court:

269 Q. Stand up. The officer is you, see? This officer here. And you are the man with the gun. What Mr. Brodsky wants you to do is to show him how he held up the gun against you. A. He had one hand on the knob and the other hand reached for the gun, and he turned me around.

Mr. Helfand: Indicating the gun right at the midsection.

By the Court:

Q. Hold it where the gun was—hold it. A. (witness shows)

270 Q. Right up against the belly button or thereabouts, and with these two people face to face, facing each other directly? A. That is right.

By Mr. Brodsky:

Q. Mr. DiBari, do you recall on the 5th of April, 1947? A. Saturday?

Q. You went to court, did you not? A. Yes; I think I did.

Q. And you went to a court on the ground floor of this building, did you not? A. Ground floor?

Vincent DiBari—for People—Cross

Q. Yes. A. Oh yes; in the Felony Court; that is right. 271

Q. And there you told the clerk of the court what happened, is that correct? A. That is right.

Q. And then you signed a complaint? A. That is right.

Q. And you swore to it before the Magistrate? A. That is right.

Q. Is that correct? A. Yes.

Q. You told the clerk what happened, did you not? A. That is right.

Q. Now, let me read this to you, Mr. DiBari, and see if this refreshes your recollection as to what happened: "Deponent heard footsteps"—deponent meaning you— A. That is right. 272

Q. "Heard footsteps outside the office and went to the door and opened it." Did you tell that to the clerk? A. No; not the office. I did not say in the office. I said in the yard.

Q. You heard footsteps outside the office? A. I heard it outside the office.

Q. Where did you hear the footsteps? In the yard? A. In the yard.

Q. Not in the garage? A. No, sir.

Q. You heard the footsteps in the yard? A. That is right. 273

Q. You opened the door leading into the yard?

A. No; I opened the door leading into the garage.

Q. Let me understand you, Mr. DiBari. You heard footsteps in the yard? A. That is right.

Q. And opened the door of the garage? A. Leading into the garage.

Q. And the moment you opened the door, the

Vincent DiBari—for People—Cross

274 three defendants were already on the top step?
A. That is right.

Q. The three defendants were standing close to the door? A. That is right.

Q. And when you opened the door, you stood close to the door, too, did you not? A. The length of the door. I was away the length of the door. I was still holding the knob.

Q. "The defendant, Loffredo, took either a revolver or a pistol from his pocket and pressed it against deponent's back?" A. How could he have put it in my back if I was facing him?

275 Q. "And told deponent not to look around, and put deponent on a chair facing the wall." A. That is maybe after he turned me around he had the gun in my back.

Q. Let me read it to you again, Mr. DiBari: "The defendant Loffredo took either a revolver or a pistol from his pocket and pressed it against deponent's back and told deponent not to look around, and put deponent on a chair facing the wall." A. If he put it in my back how could I see it? I would not be able to see the gun.

276 Mr. Brodsky: Will you concede, Mr. Helfand, that that was the statement?

The Court: Do you concede that that is in the complaint, is that it?

Mr. Helfand: Yes.

The Court: All right; let the record so state.

Mr. Brodsky: In the Felony Court, made on April 5th, 1947.

93

Vincent DiBari—for People—Cross

By Mr. Brodsky:

277

Q. Your memory was fresher on April 5th, 1947 than it is today on May 26th, 1947, is that correct? A. That is right.

By the Court:

Q. Do you understand the question? A. Yes.

Q. What did he ask you? A. He asked me if my memory was better in April before than it is today—1946.

Q. Not in 1946; just this last April. Is your memory—What Mr. Brodsky asked is, do you remember more accurately what happened in April of this year than you do now. That is what he is asking you. A. I would remember more now.

278

The Court: That is just the opposite of what you said to Mr.—

Mr. Brodsky: He said he would not remember more now.

By the Court:

279

Q. What do you mean? A. I don't know what he is talking about, that is why. Explain yourself.

Mr. Brodsky: I object to this proceeding, if your Honor pleases—your Honor questioning the witness.

The Court: I cannot hear you with your hand up against your mouth.

Vincent DiBari—for People—Cross

280

Mr. Brodsky: I am sorry. I object to your Honor questioning the witness.

The Court: All right; your objection is noted. It is overruled.

Mr. Brodsky: Exception.

By Mr. Brodsky:

281

Q. Mr. DiBari, I asked you a simple question; was your memory better on April 5th when you told the clerk of the court downstairs, who was drawing the complaint, what happened—was it better then than it is today? A. Just the same, I think.

Q. You are not sure, are you? A. Sure of what? My memory is all right. I remember.

Q. Now, Mr. DiBari, will you answer the question, please; on April 5th— A. Yes!

Q. When you told the clerk of the court that the defendant Loffredo put a revolver in your back— A. Yes!

Q. Was your memory better then than it is today? A. It was better; yes.

Q. It was better then? A. Yes.

282

Q. All right. And he immediately told you to turn around, is that correct, and face the wall? A. Yes.

Q. Or, rather—I am sorry—I withdraw that question. When he put the pistol in your back and then you told the clerk, "And told deponent not to look around, and put deponent on a chair facing the wall"— A. That is right.

Q. You didn't tell that to the clerk, is that correct? A. Right.

Vincent DiBari—for People—Cross

Q. Is that correct? A. That is right.

Q. He put the pistol into your back and told you not to look around, is that correct, Mr. DiBari? A. That is after he turned me around; yes. He put the pistol in my back, he told me to sit down, he tied me up and told me not to look around. 283

Q. Mr. DiBari, did you say anything in your complaint then about being tied up at that time? A. Maybe I was not asked.

Q. Who told you to say that? A. Nobody.

Q. Did you tell your story, Mr. DiBari, to the clerk? A. Yes; I did. 284

Q. Did you tell the clerk that the three defendants were standing close to the door, the defendant Loffredo took either a revolver or a pistol from his pocket and pressed it against deponent's back and told deponent not to look around, and put deponent on a chair facing the wall? A. That is right.

Q. Did that happen? A. Yes.

Q. Did that happen in the manner in which you say it happened on April 5th, 1947 when you told the clerk what happened? A. When they came in the door, he pulled out—

Q. Just answer— 285

Mr. Helfand: Let the witness answer.

The Court: Let him answer.

Mr. Brodsky: I object.

The Court: Overruled.

A. (continued) When they came in the door, they were facing me. When he pulled out the gun, he

Vincent DiBari—for People—Cross

286 was facing me. After he turned me around, he put the gun in my back.

Q. You did not tell that to the clerk? A. I was not asked that. He just asked me to tell the story how it happened, and I just said it the way it came to my head at that time; but if you ask me more questions, I give you more answers.

Q. But you gave him the story as it happened at that time? A. That is just a rough idea of what happened.

Q. Just a rough idea? A. Yes; he did stick the gun in my back after he turned me around.

287 Q. How long did this take, Mr. DiBari? A. How long did what take?

Q. From the time that you saw the three men in the doorway until the time they turned you around facing the wall? How long did it take?

A. I could not say. I did not have no watch on me.

Q. What would your best guess be, Mr. DiBari?

A. Three or four minutes.

Q. Mr. DiBari, do you mean to say the defendant Loffredo kept standing in front of you for three or four minutes? A. No; not in front of me for three or four minutes.

288 Q. How long did he stand in front of you? That is what I want to know. A. About a minute.

Q. A minute he stood in front of you? A. Yes.

Q. Do you know how long a minute is? A. I says "about"; I don't know just exactly.

Q. From the time that he came in, Mr. DiBari, and took the gun, and turned you around, will you slap your hand down and show us the exact start and mark the time he came in to the time

97

Vincent DiBari—for People—Cross

he told you to turn around—slap again, will you please. 289

By the Court:

Q. Do you understand what he wants you to do? A. Yes.

Q. First explain it to me so I'll make sure you understand. A. He wants me to time myself, how long it takes me, takes for me to turn around.

Q. That is not the point he is asking you. You see, you do not understand. Sit back and I will explain it to you. When I tap my hand, that is the time when the three men are there, do you understand? A. Yes. 290

Q. And you say one of them put a gun into your belly? A. That is right.

Q. Then the man turned you around, is that right? A. Yes.

Q. What Mr. Brodsky is after is how long it took from the time you first laid eyes on him until he turned you around. Can you do that for us? Now I will tap my hand. That is the time when you opened the door and looking at them. A. That is right.

Q. Then you tap your hand when it was that he turned you around. 291

The Court: Is that what you are after?

Mr. Brodsky: That is what I am after, Judge.

By the Court:

Q. Do you understand what I mean? A. How long does it take to turn around?

Vincent DiBari—for People—Cross

292 Q. No; not how long it took you to turn around. You don't follow what we are trying to find out here. Just listen for a minute, DiBari. Just relax and take it easy. You see, when I tap my hand, that is the time when you opened the door and saw these three men; is that right? A. That is right.

Q. Then something happened. What Mr. Brodsky wants is to have you show us by a tap of your hand when the end of that little episode took place, when you turned around. Do you understand? A. Yes, sir; I get it.

293 Q. It is like marking off how long it took to play an inning at Ebbet's Field, you understand, from the beginning of the pitch until the last batter is out. As far as this episode is concerned—have you played baseball? A. Yes.

Q. Do you know the game? A. Yes.

Q. That is what he is trying to get at, not how long it takes to hit a ball, how long it took to play an inning. A. In other words I got to slap it down twice?

294 Q. Yes; you can do that, yes, slap it down at the beginning, and when the inning is over, you slap your hand again. A. (witness slaps twice)

Mr. Brodsky: A period of about three seconds, if your Honor please.

The Court: All right.

By Mr. Brodsky:

Q. Then you turned to the wall? A. That is right.

Vincent DiBari—for People—Cross

Q. Then you told us that you faced the wall constantly? A. That is right. 295

Q. You did not know who was in back of you? A. No, sir.

Q. When the pistol was pulled out, Mr. DiBari, you got frightened? A. My heart started beating a little faster. I don't know if I was frightened or not.

Q. Nervous? A. Sure, I was nervous.

Q. You never had a gun put up to you before, have you, sir? A. No, sir.

Q. You were plenty scared, weren't you? A. Sure I was scared. 296

The Court: Anything else of this witness, Mr. Brodsky? How long do you expect to take?

Mr. Brodsky: Quite a bit more—a little more time, Judge.

The Court: All right; we will take a recess now, gentlemen, until tomorrow morning at 10:00 o'clock. In the meantime do not discuss the case among yourselves or with any other persons or permit anyone to speak to you about the case or discuss it in your presence. 297

Mr. Brodsky: May I say this: I can finish with this witness in about five minutes.

The Court: Well, I have things to do downstairs.

Mr. Brodsky: I would like to finish with him, Judge.

100

Vincent DiBari—for People—Cross

298

The Court: It is 5:00 o'clock now. I know what "Five minutes" means. It sometimes runs into an hour.

Mr. Brodsky: I assure your Honor I will be finished in five minutes.

299

The Court: We will take a recess now. I have had these assurances before from attorneys, and District Attorneys too. So we will take a recess now until 10:00 o'clock tomorrow morning. In the meantime do not discuss the case among yourselves or with any other person, or permit anyone to speak to you about this case or discuss it in your presence. Keep your minds open. Do not form or express any opinion or conclusion as to the guilt or innocence of these defendants on trial, or either of them, until the case is finally submitted to you.

300

I am leaving strict orders that this jury is not to read any account of this case in the newspapers. The jurors may have newspapers to their hearts' content, but before the papers are given to them, any article that appears there should be deleted therefrom. These are the strict instructions that are given to the officers in charge of the jury. The jury may listen to the radio but not to any news broadcast—any other program but a news broadcast. So we will see you tomorrow morning again gentlemen at ten o'clock and we will finish the case some time tomorrow.

Mr. Helfand: When the date of Palm Sunday was mentioned, the clerk looking

101

Vincent DiBari—for People—Cross

at the calendar said that it was Sunday, April 6th. He now directs my attention to the fact that that is Easter Sunday and that Palm Sunday was March 30th, the Sunday before. That is, when I first directed my question, I used March—March 30th was Palm Sunday. The witness said that it was about two days before Palm Sunday—back two days before March 30th, not April 6th when he went to the station house. 301

The Court: Does that really make much difference? 302

Mr. Brodsky: It was April 4th when he went to the station house. That was the date of the arrest.

The Court: Does it make much difference?

Mr. Brodsky: No; I don't think so.

The Court: All right; remanded.

(The jury retires from the room.)

Mr. Brodsky: I wish to note an objection to the denial of my request to finish the cross-examination. 303

The Court: All right.

Mr. Brodsky: Exception.

After Recess 10:00 A.M. May 27, 1947
Trial Resumed.

Vincent DiBari—for People—Cross

304 VINCENT DiBARI, resumes the stand and continues his testimony as follows:

Cross Examination by Mr. Brodsky (continued):

Q. Mr. DiBari, after this occurrence, on the night of December 11th, on the morning of December 12th, 1946, the next time that you saw these three defendants—I will withdraw the question in the form that I put it. After the occurrence of December 12th, 1946, shortly after midnight, you were taken to a station house, is that correct?

305 A. That is right.

Q. And that was the day before you signed a complaint in the Felony Court, is that correct?

A. The day before?

Q. Yes; you came to the station house, the two station houses, and then the next day you went to the Felony Court to sign a complaint. A. That is right; yes.

Mr. Brodsky: It is conceded that the Felony Court complaint was signed on the 5th of April, 1947.

306 Mr. Helfand: Whatever it says.

Mr. Brodsky: Is that correct?

Mr. Helfand: April 5th.

By Mr. Brodsky:

Q. So that you were taken to the station house on April 4th, 1947, is that it? A. That is right.

Q. That is almost four months later, isn't it? A. Right.

103

Vincent DiBari—for People—Cross

Q. Did the police officers, detectives come to your home, Mr. DiBari, or to your place where you were working, on April 4th? A. On April 4th? I think my boss told me I was wanted in the police station. 307

Q. Did you go to the police station? A. Yes.

Q. That was the 86th Precinct? A. That is right, 86th Street and Fifth Avenue.

Q. And did you there talk to the detectives? A. That is right.

Q. And after you talked to the detectives, were you conducted into a room? A. Yes, sir.

Q. How long did you talk with the detectives before you were conducted into this room? A. I don't know—just told me— 308

Q. I did not ask you what they told you. How long did you talk? A. I don't know.

Mr. Helfand: I submit that the witness be permitted to give the conversation.

Mr. Brodsky: With the detectives, Judge?

The Court: Mr. District Attorney, counsel did not ask him for conversation. He merely asked him how long he talked with the detectives. 309

By the Court:

Q. State how long you talked to the detectives. A. About a minute or two; that is all.

By Mr. Brodsky:

Q. Then you walked into a room? A. That is right.

Vincent DiBari—for People—Cross

- 310 Q. How many men were in the room? A. I think there was only these three men in there.
Q. Just three men? A. Besides the detectives—maybe a few detectives.
Q. You knew that the others were detectives? A. I did not know who they were.
Q. Did they ask these three men to stand in a line with other men? A. No.
Q. Were they seated or standing at the time? A. When I went into the room, they were standing.
Q. You looked at them? A. Yes, sir.
- 311 Q. And then you walked out? A. That is right.
Q. Did you come back again into that room? A. No.
Q. You never came back into that room again? A. I don't think so.
Q. Will you think hard, Mr. DiBari, did you come back into that room again and look again at these defendants? A. No, sir; not in that room; no.
Q. Well, in that station house, did you look at them in another room? A. I don't think so; no.
- 312 Q. Don't you remember, Mr. DiBari? A. No.
Q. What? A. I don't remember seeing them again after I saw them the first time.
Q. Walked into the room and looked at them, is that right? A. That is right.
Q. And how long did you remain in that room with them? A. A few minutes.
Q. At any time, Mr. DiBari, while you were in the room with these defendants, did you look

105

Vincent DiBari—for People—Redirect

at them and make a gesture in this fashion (show-
ing)? A. I don't remember that. 313

Q. Would you say you did or did not? A. I
don't think so.

By the Court:

Q. Did you? A. No.

By Mr. Brodsky:

Q. What? A. I don't think so.

Q. You don't think so? A. No.

Q. You are not sure, are you? A. No; I am
not. 314

Mr. Brodsky: No further questions.

Redirect Examination by Mr. Helfand:

Q. When you went into that room, Mr. Di-
Bari,—

Mr. Brodsky: May the record show the
nature of the gesture?

The Court: Palms outstretched.

Mr. Brodsky: Palms outstretched and
the head— 315

The Court: The head what? Palms out-
stretched.

By Mr. Helfand:

Q. When you went into that other room you
said there were three men in there whom you
did not know, is that right? A. Yes.

Vincent DiBari—for People—Redirect

*This is on
redirect*

316 Q. Did you know at that time whether they were detectives or not? A. No; I did not.

Q. About how many other men were in that room? A. A few men—two men I guess.

Q. And these three defendants were standing up in the room, is that right? A. That is right.

Q. Did you say anything to the defendants in that room or to anybody else before you went outside? A. No, sir.

Q. Then you went outside; did you then talk to the same detective that you talked to before you went into that room? A. That is right.

317 Q. You said something to him? A. Yes.

Q. Isn't it a fact that you identified—

Mr. Brodsky: If your Honor please—
The Court: Go ahead.

Q. (continuing) these three defendants as the same three men whom you said held you up on the night of December 11th, 1946?

Mr. Brodsky: That question is objectionable if your Honor please.

The Court: Objection overruled.

318

By Mr. Helfand:

Q. Isn't that a fact? A. Yes, sir.

Mr. Brodsky: Exception.

By Mr. Helfand:

Q. Then you went to another station house later that evening, is that right? A. That is right.

107

Vincent DiBari—for People—Redirect

Q. And there there was an Assistant District Attorney present? A. That is right. 319

Q. Whom you now know to be Mr. Andreozzi? A. That is right.

Q. He was not present, was he, in the first station house, when you identified the defendants?

A. No, sir.

Mr. Brodsky: I object to the form of the question. I object to the District Attorney leading.

The Court: Sustained.

Mr. Helfand: I will reframe the question. 320

By Mr. Helfand:

Q. Was Mr. Andreozzi or any other Assistant District Attorney present in the first station house when you identified the defendants? A. No, sir.

Q. How many hours later was it that you met Mr. Andreozzi at the second station house? A. After I left the first station house?

Q. Yes. A. Oh; it was about four and a half hours. 321

Q. Did you there again see the defendants in this case? A. Yes, sir.

Q. And did you then identify them to Mr. Andreozzi? A. Yes, sir.

Q. Now, Mr. DiBari, when these three men came at the door in this shipping room, and you saw them face to face, as you testified to yesterday—

Vincent DiBari—for People—Redirect

322

Mr. Brodsky: Object to that.

The Court: Overruled.

Mr. Brodsky: The District Attorney testifying.

The Court: Overruled.

Mr. Brodsky: Exception.

The Court: Finish your question.

By Mr. Helfand:

323

Q. Did you have a stop watch on you and to time yourself as to how long you were looking at them?

Mr. Brodsky: Object to that as already been gone over yesterday. The man said he did not have a watch at that time.

The Court: Overruled.

Mr. Brodsky: Not proper redirect.

The Court: Overruled. He is asking if he had a stop-watch.

By Mr. Helfand:

324

Q. Did you have any stop-watch to time exactly how long you were looking at them? A. No, sir.

Q. When Mr. Brodsky asked you yesterday to clap your hands from the time you first saw them until the time they turned you around, was that your best guess as to how long it took?

Mr. Brodsky: If your Honor please, I object to that, object to the question.

The Court: Overruled.

Mr. Brodsky: Exception.

Vincent DiBari—for People—Recross

A. I could not tell you exactly how long it took.
I don't know how long it took. How can I guess? 325
I don't know how long it took.

Mr. Helfand: That is all.

Recross Examination by Mr. Brodsky:

Q. Mr. DiBari, the men that you saw in the room, you said there were two other men that were walking around, is that correct? A. Where is that? The police station?

Q. In the police station; yes. A. Yes.

Q. Walked in and out? A. I don't remember. 326
All I remember is going in the room and looking at these three fellows and walking out again. That is all. I did not notice anybody else.

Q. You did not look at anybody else, is that correct? A. No.

Q. You just looked at these three fellows? A. That is right.

Q. After you left here yesterday, Mr. DiBari, did you go to the district attorney's office? A. No, sir.

Q. You did not go back to the district attorney's office? A. No, sir. 327

Q. Did you go to the Municipal Building at all yesterday? A. When?

Q. After you left here yesterday afternoon? A. No, sir.

Q. Did you talk to Mr. Helfand after you left the courtroom yesterday afternoon? A. No, sir.

Q. Did you talk to any assistant district attorney yesterday after you left the courtroom? A. No.

110

Vincent DiBari—for People—Redirect

328 Q. You are sure you did not go to the Municipal Building? A. No, sir.

Q. From this courtroom? A. No.

Q. You are positive of that? A. Yes.

Redirect Examination by Mr. Helfand:

Q. When you left this courtroom in the custody—

Mr. Brodsky: If your Honor please, I object.

329 Mr. Helfand: This has been developed by counsel, as to whether he went to the Municipal Building, talked to assistant district attorneys, after he was off the stand.

The Court: You may inquire.

Mr. Helfand: I want to show where he went.

By Mr. Helfand:

Q. Where were you taken? A. I was taken to a restaurant.

330 Q. And after you had your dinner where were you taken? A. Down to the civil court.

Mr. Brodsky: I object to all of this.

The Court: Objection overruled.

Mr. Brodsky: Exception. I merely asked him whether he had gone to the Municipal Building.

The Court: The objection is overruled.

111

John McNally—for People—Direct

By Mr. Helfand:

331

Q. You were taken to the civil detention as a material witness? A. That is right.

Mr. Brodsky: Object to this, if your Honor pleases.

The Court: Objection is overruled.

Mr. Brodsky: Exception.

Mr. Helfand: That is all.

The Court: Step down; next witness.

JOHN McNALLY, detective, shield No. 219, 66th squad, called as a witness in behalf of the People, being first duly sworn by the clerk, Mr. Pugliese, testified as follows:

332

Direct Examination by Mr. Helfand:

Q. Detective McNally, on December 11th and 12th of 1946, to what detective precinct or squad were you attached? A. 66th squad.

Q. Where is that located? A. 1430 49th Street.

Q. Does that take in the neighborhood of the Cirillo Brothers Coal Company on 36th Street, 333 38th Street? A. It does.

Q. Did you receive a call to respond to that place of business in the early hours of December 12, 1946? A. I did.

Q. About what time did you go to the place of business of Cirillo Brothers? A. About two a.m.

Q. When you got there did you see the previous witness, Vincent DiBari? A. I did.

John McNally—for People—Direct

334 Q. Did you then make an examination of the premises? A. I did.

Q. Will you tell his Honor, please, and the gentlemen of the jury what you found on your examination. A. Found the lock on the gate into the coal yard broken.

Q. Just at this point, will you state, please, to the jury—you found a lock on the gate—I show you this photograph, People's Exhibit 2 in evidence, and ask you if you refer to the gate that is shown on that picture (showing)? A. That is the gate.

335 Q. Where was the lock broken on that gate? A. On the left hand side.

Q. Of the gate? A. Of the gate.

Q. What kind of a lock was it? Was it small or large? A. Small lock.

Q. And then after you saw that, what was the next thing that you noticed in your examination? A. I noticed the rear window of the salesman's room was open.

Q. Is that the window in the back of the yard? A. That is right.

Q. As one enters through this gate? A. That is right.

336 Q. Yes; what else? A. Then in the salesman's room, the door of the stock room was broken open.

Q. In what manner was it broken open? A. The lock was forced, and it was opened up, and apparently nothing taken in there. And upstairs in the general office the door leading into the office was forced open by forcing the lock, breaking the door.

John McNally—for People—Direct

Q. When you say the general office, is that also the office known as the shipping room, or is that another room? A. That is the general office upstairs. 337

Q. Yes; go ahead. A. When I entered the office I found the safe in the bathroom of the private office, which had been ripped open.

Q. In what manner was it ripped open? Describe it, please. A. The front door of the safe was ripped.

Q. Was it ripped from its hinges? A. Ripped from its hinges; yes.

Q. How about the inner door? A. The inner door was ripped too. 338

Q. The metal inner door? A. That is right.

Q. Did you see any papers around? A. Paper strewn all over the office.

Q. On what was this safe resting when you saw it? A. On a cushion of the sofa.

Q. This was in the bathroom adjoining the main office? A. The private office.

Q. In the room known as the shipping room, which is shown on this exhibit, People's Exhibit No. 4, were there any drawers open, anything disturbed in the room? A. Yes; drawers were open in the room. 339

Q. What drawers were open? A. Papers thrown around the place. Right outside of the room I saw a chair where the watchman had been tied up.

Mr. Brodsky: I move that stricken out.

The Court: Strike it out.

Mr. Helfand: Yes.

John McNally—for People—Direct

By Mr. Helfand:

340

Q. I show you this photograph, People's Exhibit 6, and ask you whether that is a picture of the chair that you described as being in this other room? A. It is.

Q. And was the chair in the same position that you see it there? A. It was.

Q. Was there any rope on it as shown on that picture? A. The rope was on the chair; yes.

Q. Was that picture taken right within an hour that morning? A. It was.

341

Q. All right. Now subsequently, did you go with other detectives—just yes or no—to arrest these defendants? A. Yes.

Q. Where were they taken, to what precinct? A. 64th precinct.

Q. Where is that located? A. 86th Street and Fifth Avenue.

Q. And on or about April the 4th did you see the witness, Vincent DiBari, at that station house? A. I did.

Q. And without telling us what was said, did you talk to Vincent DiBari? A. I did.

342

Q. And after you talked to him did Vincent DiBari go into another room? A. He did.

Q. Did he go in alone or did you accompany him in? A. I accompanied him in there.

Q. And was anything said in that room while he was in it? Just yes or no. A. Yes.

Q. Who else was in that room? A. Quite a number of detectives.

Q. Were the defendants in the room at that time? A. No, sir.

*4 months later
we were arrested*

115

John McNally—for People—Cross

Q. And then did the witness DiBari go into another room where the defendants were? A. 343
He did.

Q. Did he go in alone? A. Yes.

Q. You were not in that room? A. No.

Q. Then you saw him come out of that room?

A. That is right.

Q. Were you present later on in the 66th precinct, where Mr. Andreozzi was present from the district attorney's office? A. I was.

Q. Did you see Mr. DiBari there? A. Yes.

Q. Were the defendants there at that time? A. 344
Yes.

Mr. Helfand: That is all.

The Court: Do you wish to cross-examine?

Mr. Brodsky: Yes.

The Court: Proceed, please.

Cross Examination by Mr. Brodsky:

Q. You arrested the defendant Loffredo at his home? A. I did not, no, sir; he was arrested there.

Q. He was arrested at his home? A. Yes. 345

Q. Was Bruno arrested at his home? A. That is right.

Q. Defendant Carlucci was arrested at his home? A. I believe he was arrested at his pet shop. He owned a pet shop in Manhattan.

Q. Uptown, pet shop? A. Yes.

Q. Now, Detective McNally, Mr. DiBari, you said, walked into one room and there were some detectives there, is that right? A. That is right.

John McNally—for People—Cross

346 Q. Then he went into another room? A. That is right.

Q. These three men were all alone in the room?

A. Yes.

Q. Nobody else there? A. No.

Q. Sure of that? A. That is right.

Q. How many times did he go into that room?

A. Twice, I believe—once when he went into that room.

Q. Now, in the first station house?

By the Court:

347 Q. Into the room where these defendants were?

A. Where the defendants were.

Q. How many times did he go in? Once or twice—once or twice? A. Once.

By Mr. Brodsky:

Q. Thereafter did he go into that room again?

A. Not that I know of.

Q. How long did he remain in that station house? A. Quite a long time.

348 Q. And during that time were you with him all the time? A. No, sir.

Q. Other officers were with him? A. Yes.

Q. So you would not know how many times he went into that room? A. No.

Q. You know he went in there once? A. I know that he went in there once.

Q. Detective McNally, did you take the door off the safe? A. No, sir.

Q. Who took it? A. Technical Research man.

117

Harold A. O'Neill—for People—Direct

Q. They took it? A. Yes. 349
Q. Took it to be analyzed? A. Yes.
Q. Fingerprints? A. Yes.
Q. Any fingerprints? A. Yes.

HAROLD A. O'NEILL, shield No. 165, Bureau of Criminal Identification, called as a witness in behalf of the People, being first duly sworn by the clerk, Mr. Pugliese, testified as follows:

Direct Examination by Mr. Helfand:

Q. Detective O'Neill, to what assignment are you a member? A. Bureau of Criminal Identification. 350

Q. How long have you been with the Bureau of Criminal Identification? A. About twenty years.

Q. Familiar with the taking of fingerprints? A. I am.

Q. Examination of fingerprints? A. I am.

Q. On various objects? A. Yes, sir.

Q. Comparison of prints? A. Yes, sir.

Q. Testified, have you, in court on many occasions? A. I have. 351

Q. Taken courses in fingerprints? A. Yes, sir.

Q. Now, on or about December 12, 1946, in the early morning did you go to the premises of Cirillo Brothers Coal & Fuel Corporation, 1327 38th Street? A. I did.

Q. Did you there examine a safe? A. I did.

Q. What was the condition of the safe when you saw it? A. Ripped open, lying on the side on the floor.

118

Harold A. O'Neill—for People—Direct

352 Q. What did you do to that safe? A. I processed the safe with fingerprint powder, examined it for fingerprints; found various smudges, but no fingerprints of value.

Q. When you say you processed it, just explain to the jury what you mean by that? A. Dusted it with a special fingerprint powder that would bring out latent fingerprints if they are there.

Q. You found none other than smudges? A. That is right.

Q. Were you able to find any fingerprints of any kind? A. None whatsoever.

353 Q. Did you do that to the door of the safe? A. I did.

Q. Also to the inner door? A. Yes, sir.

Q. Any other objects that you examined for the purpose of finding fingerprints if you could? A. Yes; there was a liquor cabinet and a desk and an armchair and a settee.

Q. And you processed all of those articles? A. Yes; and various boxes, small coin boxes.

Q. You were not able to find any fingerprints from which you could make a fingerprint identification of any kind? A. That is right.

354

Mr. Helfand: That is all.

Mr. Brodsky: No questions.

PEOPLE REST.

Mr. Brodsky: May I recall Mr. Gus Cirillo?

Gus Cirillo—for People—Recalled—Recross

The Court: (To Gus Cirillo) Come back. 355

GUS CIRILLO, recalled for further recross-examination by Mr. Brodsky, continued his testimony as follows:

Recross Examination by Mr. Brodsky (continued):

Q. Mr. Cirillo, I show you People's Exhibit 4 in evidence and ask you to look at it for a moment, please (showing). Now, looking at that photograph, Mr. Cirillo, you see a light where the Judge has indicated, where the light is alleged to have been burning? A. Yes; that is right. 356

Q. The night of the occurrence—that light is in a small office, is that correct? A. That is right; in a small office, small room.

Q. Small room is about how big? A. I will say about seven by six or something like that.

Q. And the light is a hanging light in this fashion, is that correct? A. Yes.

Q. Indicating a light hanging by a chain over the courtroom. A. That is right. 357

Q. It is surrounded by a large globe, is it not, Mr. Cirillo? A. Yes, sir; a large globe.

Q. The globe is dirty, Mr. Cirillo? A. I could not tell you that.

Mr. Helfand: I would like to know whether they are talking about today, December, or when.

120

Gus Cirillo—for People—Recalled—Recross

By Mr. Brodsky:

358

Q. How often is that globe cleaned, Mr. Cirillo, do you know? A. I could not tell you that. Supposed to be clean there.

By the Court:

Q. When people work in that office, are they bookkeepers there or what? A. Bookkeepers.

Q. Is that the light which furnishes the light which enables them to work on books? A. Yes.

Q. Is that the light that is used by the bookkeepers? A. Yes.

359

Q. That hangs down from the ceiling? A. That is right.

By Mr. Brodsky:

Q. As a matter of fact the bookkeepers work outside this little office, don't they? A. No.

Q. In another room? A. No; they are working at that place.

Q. In the room there are no other lights? A. There are three lights altogether.

Q. All three lights burn during the day, don't they? A. Not all the time.

360

Q. Don't at least two lights burn during the day? Of course it is a dark office? A. I could not say that it is dark, but we use the lights.

Q. How many lights were burning this morning?

Mr. Helfand: Object to that as incompetent, irrelevant and immaterial, no bearing on the issues in this case.

The Court: Sustained.

Mr. Brodsky: Exception.

121

Gus Cirillo—for People—Recalled—Recross

By Mr. Brodsky:

361

Q. Now, Mr. Cirillo, looking at that photograph, this is a partitioned-off office, isn't it?

A. That is right.

Q. As you have indicated, seven feet by six feet, and there are three wooden partitions on top of the office, with glass, is that correct? A.

That is right.

Q. Separating them? A. That is right.

Q. And underneath that there is—

Mr. Helfand: Object to all this on the ground the picture is in evidence, and it is evidence of the kind of partitions which are portrayed on that picture, without description being necessary by counsel or the witness.

362

The Court: He may ask it.

By Mr. Brodsky:

Q. At the base of the three-window partition leading to the ceiling? A. That is right. There is glass window on top. There is a little board which holds the glass window; then we get the other window. 363

Q. Then there is another board? A. No; window glass window.

Q. Leading into the office, is that correct? A. That is right.

Q. But I am talking about the three windows above the door? A. That is right. That is also a glass window excepting you have then the support of the moulding—whatever you call the

Gus Cirillo—for People—Recalled—Recross

364 board, wide as this one, to hold the glass on both sides.

Q. You have indicated a width of about how much? A. I will say about six inches.

Q. And standing at the door, Mr. Cirillo, leading from the shipping room into the garage, and looking at the light, Mr. Cirillo, does that board cover the light? A. Not a hundred per cent.

Q. Not a hundred per cent? What per cent does it cover that light?

365 The Court: When you speak of the light, do you mean the fixture?

Mr. Brodsky: The fixture itself.

The Court: Let us know what you are talking about.

Mr. Brodsky: The entire globe.

The Court: We are talking now about the fixture, not about the light that filters through the glass.

The Witness: The fixture.

The Court: The fixture, you understand?

The Witness: Fixture.

366 By Mr. Brodsky:

Q. How much of it does it cover? A. I could not tell you that.

Q. About how much of it can you see? A. You can see two inches or more above the top.

Q. Two inches now off the top? A. I am talking now of the globe.

Q. Nothing of the bottom? A. Now you got

123

Gus Cirillo—for People—Recalled—Recross

me. I could not tell you the bottom. I looked on
the top and I saw two inches the top. 367

Q. Now, there is another board, isn't there, Mr.
Cirillo? A. That is the only board.

Q. The board of the wooden partition. There
is a space between this little office and the outer
shipping room, isn't there, on the same level with
this board? A. It is on the same level? No; it
is lower. That is much lower. That partition goes
on top like that. You have got the other board,
the other partition. That is much lower.

Q. Yes; but the top of the other partition, is
that on the same level with this board that you 368
have just described? A. No; I don't think so.
No; there is another board there, counselor. I
know there is one board which holds the top
glass and the bottom glass. You have got to have
them. And the rest is all open.

The Court: How much longer do you
expect to take with this man?

Mr. Brodsky: Not long, Judge.

The Court: All right.

By Mr. Brodsky:

369

Q. Mr. Cirillo, how wide was the space upon the
top landing? How wide is the top landing shown
on People's Exhibit 3 in evidence? A. I believe
it is about thirty inches.

Q. Thirty inches square? A. Wide.

Q. And how long? A. You mean the side of
the garage?

Q. The top step, the landing there? A. I be-
lieve it is more than thirty inches. I did not

124

Gus Cirillo—for People—Recalled—Recross

370 measure it. I could not give you the exact term.
Q. Thirty inches by thirty inches!

Mr. Helfand: He says he did not measure it. We have the picture to show.

Mr. Brodsky: The picture would not show that.

Mr. Helfand: The witness says he did not measure it; so his guess is as good as ours or the jury's. We can all start guessing.

371 Mr. Brodsky: I object to the district attorney—

Mr. Helfand: The witness says he did not measure it. I object.

Mr. Brodsky: I do not have to be bound by a measurement. I can ask him what his best recollection is as to what the measurement is.

Mr. Helfand: If he has a recollection.

Mr. Brodsky: What his best approximation of the measurement is.

By the Court:

372 Q. Go ahead. Tell him if you can. What do you think the width is? A. I will say the width of the stairs there is about the way it shows on this picture, about a few inches wider than the door.

By Mr. Brodsky:

Q. How wide is that door? A. Around thirty.

Q. Thirty inches? So that the landing is two

125

Gus Cirillo—for People—Recalled—Recross

inches wider, is that correct? A. That is right; judging from the picture. 373

Mr. Brodsky: All right; no further questions of this witness.

By the Court:

Q. Tell me about these two rooms. I want to get a better idea, if you can give it to us, about how large these rooms are. Take the small room that you call the small room, how large a room is that? A. How large a room is that? I will say as wide as this one. 374

Q. From where you are to where? A. This here desk from over here.

Q. From this point over to the wall?

The Court: That would be approximately—

Mr. Helfand: About six or seven feet wide.

Mr. Brodsky: Agreed. I should say seven to eight feet wide—between six and eight feet wide. 375

By the Court:

Q. How long is it? A. I will say about to that chair.

Q. The beginning of the chair? A. Yes.

The Court: That would be another seven or eight feet; is that about right?

127

Motions

Mr. Helfand: Globe—not bulb; there was
a clear bulb in it. 379

The Court: All right.

PEOPLE REST

The Court: Are there any motions?

Mr. Brodsky: I would like to make my
motions in the absence of the jury.

The Court: I don't think that is neces-
sary unless you want to argue it.

Mr. Brodsky: I would like to argue it,
judge. 380

The Court: (To the jury) All right; step
out, gentlemen, right in that room. Please
do not discuss the case. Keep your minds
open.

(The jury retired to the anteroom of the
court.)

The Court: Suppose you make your mo-
tions first; then we will hear the arguments;
so that the record will be clear.

Mr. Brodsky: If your Honor please, at
this time I respectfully move to dismiss the
indictment, and each count thereof, upon
the ground that as matter of law the Peo-
ple have failed to make out a prima facie
case. 381

The Court: (To the stenographer) All
right; you need not record the argument.
I will hear you.

128

Motions

382

Mr. Brodsky: I just want a ruling on that, Judge.

The Court: Motion denied.

Mr. Brodsky: Defendants rest.

The Court: Bring the jury in first. You must rest when the court is in session, not when the jury is out.

(The jury returned to the courtroom.)

The Court: The motion has been disposed of, Mr. Brodsky. You may proceed.

Mr. Brodsky: The defendants rest, your Honor.

383

The Court: All right; defendants rest.

Mr. Brodsky: Now I have a motion to make, if your Honor pleases.

The Court: Make it, please.

Mr. Brodsky: May I make it in the absence of the jury?

The Court: No; make it now. I cannot keep sending this jury in and out. There is no point in it. Make your motions.

Mr. Brodsky: Exception. I have made the motion, Judge.

384

The Court: Make your motion again.

Mr. Brodsky: If your Honor please, at this time I respectfully move to dismiss the indictment, and all the counts therein contained, upon the ground that the People have failed to prove the guilt of these defendants beyond a reasonable doubt.

The Court: The motion is denied.

Mr. Brodsky: Exception.

(Conference at the bench.)

129

Motions

Mr. Brodsky: Will your Honor permit
me about ten minutes to gather my
thoughts? 385

The Court: I think you may proceed at
the present time, unless you find it is neces-
sary—it is a very, very short case.

Mr. Brodsky: It is.

The Court: And you have had overnight
to collect your thoughts. If you wish you
can proceed now. If you wish ten minutes
I will be glad to give it to you.

(Mr. Brodsky summed up for the defen-
dants.) 386

(Mr. Helfand summed up for the People.)

(The court charged the jury as follows:)

387

Charge to the Jury

388 The Court: Mr. Foreman and Gentlemen of the Jury:

Three defendants are on trial before us and each is accused of committing three crimes, all of which allegedly arose out of the same occurrence.

The indictment reads as follows:

"County Court of the County of Kings. The People of the State of New York, Plaintiffs, against Louis Loffredo, Anthony Bruno and Dominick Carlucci, Defendants.

389

"First count.

"The grand jury of the County of Kings, by this indictment, accuse the defendants of the crime of robbery in the first degree committed as follows:

390

"The defendants on or about December 12, 1946, in the County of Kings, unlawfully took a quantity of United States currency and bonds, all of the total value of more than five hundred dollars, from the possession of and in the presence of Vincent DiBari, against his will, by means of force and violence and fear of immediate injury to his person, each of the above-named defendants being actually present at the time and each aiding the other, and the above-named defendant Louis Loffredo being armed at the time with a dangerous weapon, to wit, a firearm.

"Second count.

"The grand jury of the County of Kings, by this indictment, accuse the defendants of

131

Charge to the Jury

the crime of grand larceny in the first degree, 391
committed as follows:

"The defendants on or about December 12, 1946, in the County of Kings, in the night time, stole and took from the possession of Vincent DiBari, a quantity of United States currency and bonds, all of the total value of more than five hundred dollars, owned by Gus Cirillo, Monica Domenica Cirillo, Constantino Cirillo, Nicholas W. Cirillo, William J. Cirillo, and Cirillo Brothers Coal & Fuel Corporation, with the intent to deprive the owners thereof and of the use and benefit thereof, and to appropriate the same to the use of the defendants. 392

"Third count.

"The grand jury of the County of Kings, by this indictment, accuse the defendants of the crime of assault in the second degree, committed as follows:

"The defendants on or about December 12, 1946, in the County of Kings, with intent to commit the crimes of robbery and grand larceny, wilfully and wrongfully assaulted Vincent DiBari." 393

The indictment which I hold in my hand, gentlemen, is merely a charge, or accusation. It has no probative force. The defendants under our law, and each of them, are presumed to be innocent. That presumption attends them throughout the entire proceedings, and accompanies them into the jury room. It, in and of itself, entitles

Charge to the Jury

394 the defendants to an acquittal, until and unless the full requirements of the law have been met. These requirements are as follows:

The burden of establishing their guilt rests upon the shoulders of the prosecution. The burden of proof never shifts under any circumstances. The defendants are entitled to demand that satisfactory, credible, reliable, trustworthy and accurate evidence be adduced against them. A verdict must be founded only upon such evidence.

395 The law requires that the guilt of these defendants be established beyond a reasonable doubt. If, after a full, careful, impartial and intelligent review of all of the evidence in the case, you are not satisfied of the defendants' guilt to a moral certainty, then the law commands you to bring in a verdict of acquittal. In other words, under such circumstances, the presumption of innocence has not been overcome, and under the law the defendants are therefore entitled to a verdict of not guilty. On the other hand, if you are convinced from the believable, accurate, reliable evidence in the case of the guilt of the defendants beyond a reasonable doubt, that is to a moral certainty, it is your manifest duty to bring in a verdict of guilty. You must bear in mind that the prosecution must prove the defendants' guilt beyond a reasonable doubt. You must hold the prosecution to strict account in that regard. If the prosecution fails, the defendants must be acquitted. On the other hand, if the prosecution prevails, your verdict should be guilty.

396

You must distinguish, you must differentiate between the requirement of the law which demands that a defendant's guilt be established beyond a

Charge to the Jury

reasonable doubt, and a standard of proof that is not required by the law, namely, to prove a defendant guilty beyond all possible doubt. You cannot prove any defendant guilty beyond every possibility of doubt; for, when you depend upon proof which comes from human beings, there is hardly ever a case that came into any court in the length and breadth of this country where some sensible juror cannot arise with justification and say in the jury room, "Well, there is a possibility that this man may be innocent." If the law required that a defendant be proven guilty beyond all possible doubt, then nobody would ever be convicted. The law does require that his guilt be established beyond a reasonable doubt. I emphasize that. I call it to your attention in simple English. I have described to you what a reasonable doubt is, and I have called to your attention that the district attorney must prove a defendant's guilt beyond a reasonable doubt, but no juror has the right to insist that he prove the defendant guilty beyond every possible doubt. 397 398

My differentiation between the two terms should not be taken by you, even in the remotest degree, to indicate any desire or inclination on my part to minimize the importance of proving a defendant's guilt beyond a reasonable doubt. Jurors must insist that the proof meet that standard. But I think it is important, especially with laymen, who are not lawyers, who have never gone to law school, to clear up the matter, so that the jurors will have in their mind what is required and what standard the district attorney must meet; and at the same time a standard which the law does not expect a district attorney to meet. Again I say to 399

Charge to the Jury

400 you that the district attorney must—I underscore the word must—satisfy you of the defendants' guilt beyond a reasonable doubt; but the district attorney is not expected to prove any defendant guilty in any case beyond every possible doubt, or every conceivable doubt, or every imaginary doubt.

401 Gentlemen of the jury, you are required to follow the law that I lay down; but I imagine there are certain types of individuals who sit in the jury box and apparently listen to what the judge is saying—perhaps their minds are a million miles away—perhaps they are just sitting there because they have to—and it may be—I do not say that it has happened—you will find one of that type will go into a jury room and immediately take charge. That type of individual makes the law to suit his own fancy, as to what he thinks the law should be. He cares not what the judge said concerning the law, and he immediately becomes—if I may use the expression—the boss in the jury room. Gentlemen, you are American citizens. You love this country. Many of you older men have given your all, not only yourselves but your loved ones, so that our system of life may be preserved. There is nothing in this country above the law, except possibly the Almighty. I am not referring to the Almighty. I am referring to our own doings, our own conduct. There is no man who is above the law. If there were men who were above the law then we would have anarchy, we would have chaos. We live here happily, thank God, because we are a community of law and order, and we conduct ourselves according to law. If one man has a grievance against the other, he does not, if he is

402

Charge to the Jury

a law-abiding citizen, resort to the use of arms; he does not fight a duel; he goes into a court of justice. Where it is charged that men have committed crimes against the peace and dignity of the community, here in this blessed state of ours, we adjudicate the matter in a temple of justice according to law. Trials are conducted according to law. Verdicts are rendered according to law. The judgments of the court are pronounced according to the terms set down by our law. Jurors, in the sanctity of their private chamber, when they are deliberating, must accept the law as the court lays it down. No juror, if he is a decent citizen, would have the temerity to arrogate to himself the privilege of bending, or twisting, or amending the law to suit his own fancy as to what the law should be. A good juror accepts the law, as it is his duty so to do, when the law is pronounced by the court.

403

404

During the course of the trial I denied counsel's motions to dismiss this indictment. These motions were made at the close of the district attorney's case and they were renewed when the entire case was concluded. I denied these motions because, as the jurist presiding over this trial, I determined that, as a matter of law, this case required the consideration of a jury. My denial of these motions did not indicate any opinion on my part, one way or the other, as to guilt or innocence, nor was I ruling upon guilt or innocence. My denial of counsel's motions was merely a ruling upon a proposition of law which should not and must not affect you in your judgment of the guilt or innocence of the defendants.

405

Gentlemen of the jury, under our law you have been ordained as the sole and exclusive judges of

Charge to the Jury

406 the facts in this case. You, and you alone, determine the credibility of the witnesses and the force and effect of their testimony. The court is the judge of the law; the jurors are the judges of the facts. The court must stay within its province; the jurors must stay within theirs. However, working together, you and I, harmoniously, in our respective spheres, we make up the County Court of Kings County in this case; and only in that fashion can we do justice, by remaining within our own provinces respectively.

407 You have seen these witnesses on the stand; you have had an opportunity to observe them. With each witness you should ask yourselves this question: What interest has that witness in the case? Sometimes a person who has no interest in the case may falsify. On the other hand, sometimes a person who has an interest in the case may tell the truth, and *vice versa*. But, as sensible men, you have a right to ask yourselves this logical question: What interest has this witness in this case? What has he to gain by giving his testimony? "What axe has he to grind?" as they say colloquially. "What is there in it for him?" As they say in common parlance. You have the right
408 to consider the interest of a witness in judging his credibility. There is no hard and fast rule which you must follow or should follow. That is an item that a sensible man takes into consideration in attempting to make up his mind whether he will place confidence and credence in the testimony of a given witness. And, so I say to you, you should take the interest, if any, of each witness that appeared before you into consideration, in deciding his credibility.

Charge to the Jury

You have seen these witnesses on direct examination as well as on cross-examination. You must realize that these witnesses are sitting on the chair, on the witness chair, in a courtroom, in the presence of strange people, under examination by the proponent and by the opponent. Nonetheless, you should take into consideration how these witnesses behaved themselves, how they answered questions, their facial expressions, their demeanor, in determining whether these witnesses have told the truth. 409

During the course of the cross-examination of the watchman, the attorney for the defendants confronted him with some statement he made, or which he signed, rather, downstairs in the Magistrates' Court; and Mr. Brodsky pointed out that in that statement that was sworn to by this witness there is an allegation to the effect that the gun held by one of the holdupmen was stuck in the witness's back and he was told not to turn around; and that there is no mention in that particular complaint of the placing of the weapon in the vicinity of the witness's abdomen or navel. 410

Mr. Helfand on redirect examination had the witness give a little more detail as to what happened downstairs in the clerk's office. The witness claims that he was not asked any specific questions in detail, and that he tried to give a resume of what happened. 411

Now, with reference to this complaint in the Magistrates' Court, if you find that there is anything in there that is contradictory of what the witness said here, which contradiction has not been explained to your satisfaction by the witness, then you may consider such contradiction, if any,

Charge to the Jury

412 in judging the credibility of the witness—in other words, in determining the force and effect and the credibility, the reliability, and the accuracy, of what he says in here. On the other hand, if you are satisfied that he has given a satisfactory and proper explanation of how he came to omit, as he claims it, the reference to placing of the gun in the vicinity of his abdomen, then of course the contradiction may be considered by you in another light.

413 If you find that any witness has wilfully testified falsely as to any material fact in the case, you are at liberty to disregard that witness's entire testimony. On the other hand, you are not bound so to do. You may accept that part of his testimony which you find to be true and disregard that which you find to be false.

Now I shall define for you the three crimes that are charged in this indictment. They are robbery in the first degree, grand larceny in the first degree and assault in the second degree.

414 "Robbery is the unlawful taking of person's property from the person or in the presence of another, against his will, by means of force or violence or fear of injury, immediate or future, to his person or property, or the person or property of a relative or member of his family, or of anyone in his company at the time of the robbery."

You will be bound by this definition. In simple English it means this: where a theft occurs either from the person or in the presence of a person, but such theft is accomplished by the use of force

Charge to the Jury

and violence and threats of bodily injury, the crime committed is robbery.

415

A pickpocket who steals a man's purse does not commit robbery. He commits larceny. He does not use force and violence. He commits his crime secretly, furtively—he does not want it discovered. The robber, on the other hand, commits his crime boldly, brazenly, by the use of force, which intimidates the victim. That is the difference between robbery and larceny.

These defendants are accused of committing robbery in its first degree. Before defining that degree of robbery, let me call to your attention another provision of the law which speaks in the following words:

416

"To constitute robbery, the force or fear must be employed either to obtain or retain possession of the property or to prevent or overcome resistance to the taking. If employed merely as a means of escape it does not constitute robbery."

The law also provides:

"When force is employed in either of the ways specified in the last section" (which I have just read) "the degree of force employed is immaterial."

417

Robbery in the first degree is defined as follows—I shall read only that portion of the statute which has application to the allegations of this indictment:

140

Charge to the Jury

418

"An unlawful taking or compulsion, if accomplished by force or fear, in a case specified in the foregoing sections of this article, is robbery in the first degree when committed by a person being armed with a dangerous weapon or being aided by an accomplice actually present."

419

In the one instance, in the case of Loffredo, it is charged, with what force and effect it is for you to say, that he is guilty of robbery in the first degree even if he had committed the crime himself with no accomplices present. Why? Because it is charged that he had a gun in his possession at the time that this alleged robbery was committed. In the case of the three defendants it is charged that they are guilty of robbery in the first degree because the three of them, it is claimed, were present, each aiding and assisting the other in the perpetration of this alleged crime, and that, therefore, there being accomplices present, one helping the other then and there in the perpetration of the robbery, they are all guilty of robbery in the first degree.

420

Now, to recapitulate: when the robber is armed with a gun he is guilty of robbery in the first degree. When there are two or more robbers working together, even if they are not armed, even if they have no guns, they are guilty of robbery in the first degree, if they are all present each aiding and assisting the other in the perpetration of the robbery. Therefore, the charge is robbery in the first degree. Loffredo is accused of robbery in the first degree, as I have said, because it is claimed—I underscore the word claimed—that he

141

Charge to the Jury

had a gun. The three of them are accused of robbery in the first degree because, it is claimed, that there were three accomplices each helping the other in the perpetration of this robbery. 421

Larceny, in simple English, means the theft of personal property. Let me give you the definition by which you will be bound:

"A person who with the intent to deprive or defraud another of the use and benefit of property, or to appropriate the same to the use of the taker or of any other person other than the true owner, wrongfully takes, obtains, or withholds, by any means whatever, from the possession of the true owner, or of any other person, any money, thing in action, evidence of debt or contract, or article of value of any kind; steals such property, and is guilty of larceny." 422

Where the value of the property at the time of its taking is more than five hundred dollars, the crime committed is grand larceny in the first degree. Here it is claimed that thousands of dollars worth of property was stolen by these defendants. But, where the property is worth more than five hundred dollars, the crime committed is grand larceny in the first degree. 423

The third count in the indictment accuses the defendants of committing assault in the second degree. The statute defines that crime in the following words:

"A person who assaults another within intent to commit a felony, is guilty of assault in the second degree."

142

Charge to the Jury

424 In this case it is claimed, with what force and effect it is for you to say, that one of these defendants, namely, Loffredo, stuck a gun into the abdomen, or near the abdomen, of the alleged victim, the watchman. In the case of the third defendant, the one who is sitting on the end, Dominick Carlucci, it is claimed, with what force and effect it is for you to say, that he trussed up the victim and tied him to the chair when they were in the garage.

425 The three defendants are accused of assault in the second degree. The three defendants are accused of acting in concert. It is claimed that what one did is binding on the other two, because what the one did was in furtherance of the commission of the crimes of robbery and grand larceny. Therefore, it is charged that what one did is binding on the other two, and that all three are, therefore, responsible for the acts of each.

It is charged that Mr. DiBari was assaulted and that such assault was committed by these three defendants, with intent to commit the crimes of robbery and grand larceny; and when assault is committed in that fashion the crime committed is assault in the second degree.

426 It is not necessary that the victim be injured. The law does not require that his skull be bashed in, or that a bullet be put into his body. The pointing of a revolver in a menacing fashion, with the intent on the part of the culprit to instill fear and trepidation in the heart of the victim, that may be considered by the jury to be sufficient, under certain circumstances, to constitute the act an assault, and, if that is so, and it was committed with an intent to cow the victim, to intimidate him, so that a robbery could be perpetrated and a

143

Charge to the Jury

grand larceny could be perpetrated, then those who committed that assault are guilty of assault in the second degree. 427

Gentlemen, I am about to make some very brief reference to the testimony in the case. You must bear in mind that I am not in anywise seeking to express my own opinion as to the credibility of the witnesses, or as to whether the testimony to which I make reference has or has not established any fact or facts in the case. That is solely within your province; that is solely your responsibility. I refer to some of the evidence in the case, some of the high lights of the evidence, in order to lead your individual and collective minds along investigational channels, so that you will be in better position, in some instances, to understand some of the principals of law that apply to the case. Your verdict must be based upon all of the evidence in the case whether I refer to it or not. Your recollection of the evidence will control over that of the lawyers, or even over that of the court. 428

I need not dwell at length on the testimony of the Cirillo brothers. They described in detail the layout of the premises, where the safe was located, where the light fixtures were located, how much money was in the safe, how much in United States bonds was in the safe. The case in the main, judging from the summations of counsel, turns upon the witness DiBari. What does DiBari tell us? 429

He says he is 35 years of age; that he is a married man with a wife and children. He tells us that on December 11th of last year he was on duty at this establishment as a relief watchman. He said that he had worked for this concern for a period of

144

Charge to the Jury

430 fifteen years, except during the war-time inter-
lude, when he was employed in the Brooklyn Navy
Yard. He said that shortly before midnight he
was awakened from his nap by the ringing of the
telephone, and he went to the telephone and
picked up the receiver. There was no reply. He
then put the instrument back on the desk and sat
down and listened to the radio. He said that a few
minutes thereafter he suddenly heard footsteps
crunching the soft coal in the yard of this coal and
oil establishment. He said he got up and walked
over to the door which led into a garage. He said
431 that he slipped the bolt out of its holder, put his
hand on the knob of the door and pulled the door
open, the door swinging inward into the room, and
as the door of the room was opened, there, framed
in the doorway were three men, one standing in
front of the two others—that is, one in front and
two others a little to the rear or to the side of the
man. He told us that they were two feet away
from him. He said that the defendant Loffredo
then pulled out a small gun from the vicinity of
his belt and presented the gun at him and ordered
him to turn around; that he followed instructions;
that then his hands were tied behind his back with
432 some twine or some rope, and he was ordered to
sit in a chair, which he did. He claims that then
they spoke to him and one of them asked him how
much money was in the place, and that DiBari
replied that he did not know. Then one of the de-
fendants asked if this was the main office, but
another defendant replied "Yes." He said then
he heard them going through the room pulling out
drawers. One of them stood behind him and then
asked him if he would like to have a smoke. This

Charge to the Jury

individual then lit a cigarette and gave Mr. DiBari
a cigarette to smoke. While sitting there, Mr. 433
DiBari tells us he heard footsteps moving about
upstairs. About ten or fifteen minutes later one
of the men told him that he was to go out of this
room and into the garage. He claims that when
he got into the garage he was seated in a chair;
his hands were tied behind his back; and, on this
occasion, they trussed or fastened his leg to the
legs of the chair so that he could not move. Mr.
DiBari claims that he felt chilly and then one of
the men put a blanket around his shoulders to
keep him warm. He claims that the man that tied 434
him up was the defendant Carlucci. He tells us
that he saw Carlucci when Carlucci was at the
door with the other two men, when they first en-
tered. He said he noticed at that time that Car-
lucci had a cap with a pin stripe. He says that,
although when he was being tied up in the chair
in the garage he could not see the face of the man,
he, nonetheless, saw that same cap, or a cap that
was identical, on the head of the man that was tying
him up. He tells us that after these men were in
the premises for a while one of them said to him,
"Stay here and give us ten minutes to get away."

He said he sat there in the chair for some time 435
after these men departed; that finally he heard
some motor outside and he succeeded in releasing
himself from his bonds and called the police, and
the police arrived there shortly thereafter. He
tells us that in the month of April, the early part
of April, he went to the station house and there
he saw these three men. He tells us that he identi-
fied these three men as the men who committed
these acts on the night in question.

Charge to the Jury

- 436 I charge you, gentlemen of the jury, that, in considering the testimony of DiBari concerning his identification of the defendants as the men who is said to have committed these crimes, you must bear in mind the following two questions: Is the witness truthful? You must consider, as I have already indicated, whether the witness is swayed by any motive to testify to anything but the truth, or whether his testimony is warped by any possible bias or interest in the outcome of the case, or whether he has made any identification by virtue of any suggestions or promptings from any source whatever; in sum, you are to apply carefully to this witness DiBari the same tests as to credibility as you would to every witness in the case. I charge you further that you must determine whether or not the identification is accurate and reliable. In that regard you must consider all the circumstances under which the identification was made. You must consider the opportunity that DiBari had to observe the culprits at the time of the commission of the alleged crimes, for how long a period was each of the culprits under observation, how close did DiBari get to the culprits, what was the condition of the light; and then again, are the faces of the culprits such as would make a definite impression upon the mind of the witness DiBari. You must also consider, upon the subject of accuracy, the length of time that intervened between the date of the commission of the alleged crimes and the occasion when DiBari saw the defendants at the time of the arrest, as having some bearing, undoubtedly important, on the probability that he could remember the faces of the defendants after such a lapse of time. You must also
- 437
- 438

Charge to the Jury

take into account the witness's own capacity for observation, and his memory, and all other tests and standards, in addition to those I have already enumerated, that you yourselves may deem of importance. I charge you, in unmistakable English, that there is necessity for the use of the utmost caution and the utmost precaution in weighing proof as to identification. It must be with sufficient certainty so as to preclude a reasonable possibility of mistake. 439

A question that is probably going to be considered by you at great length is the question of identification. If you are not satisfied of the accuracy of DiBari's identification, beyond a reasonable doubt, then you must acquit the defendants. On the other hand, if you are satisfied beyond a reasonable doubt that DiBari has not only told the truth as to what happened that night, but is also accurate in the identification of these defendants, then you have a right to bring in a verdict of guilty, if from all of the evidence in the case you find that each and every element of the crime charged has been established beyond a reasonable doubt. 440

The law does not say that you have got to have two witnesses or three witnesses or four witnesses or any number of witnesses. That is simple English, isn't it? If any juror fails to understand what I have just said, it is his duty to put up his hand so that I will make it more plain. There are certain cases in the criminal law where we have to have more than one witness—for example, in perjury cases you have to have more than one witness. But the law does not say that there must be more than one identification witness. If the jury is not 441

Charge to the Jury

442 satisfied with that identification witness's testimony, that ends the case; but, on the other hand, if the jury is satisfied with that witness's identification—if the jury is satisfied that the identification of the defendant is accurate beyond a reasonable doubt, then that one witness's testimony is just as good as a thousand witnesses' testimony. Is that clear? I am charging you the principles of law, gentlemen. Again I emphasize that no juror has the right to labor under the impression that I am in anywise, shape, form or manner, even remotely, suggesting to this jury what their verdict should be in this case, or how they should evaluate any witness's testimony. I am trying to keep your minds on the path as far as the law is concerned.

That is about all the law that you need in order to intelligently decide this case.

None of these defendants took the witness-stand and testified in his own behalf. The law with reference to that feature of the case is as follows: Each defendant had a right to take the witness-stand and to testify in his own behalf, but his failure, or neglect, or refusal to testify in his own behalf must not and should not create any unfavorable inference against him.

444 Take this case, gentlemen, and come in with a verdict that will reflect your sober judgment as fair-minded, intelligent citizens of our community. Come in with a verdict that speaks the truth. Come in with a verdict based on common sense and intelligence. Come in with a verdict that will be based solely on the evidence in this case, not on surmises or on speculations. You are bound by the credible evidence in this case. Deal with the evi-

Charge to the Jury

dence and fair inferences which may be drawn therefrom; stick to the evidence. We are not concerned with what happened in some case in New York or what the papers printed two or three months ago, or what some man heard his cousin tell him occurred in some other town. We are not going to decide this case on cases that happened in New York or on newspaper articles. We are going to decide this case on this evidence, gentlemen. You stick to this evidence. And if any juror, any colleague of yours, attempts to lead you away from the evidence, you, figuratively speaking, take him by the lapel of his coat and bring him back to the evidence in this case. This case will be decided on the evidence, on the evidence alone, and on nothing else.

Give these defendants a fair and square trial. Give them every right that belongs to them. I have dealt with their rights at length. If their guilt has not been established, acquit them. On the other hand, if their guilt has been established beyond a reasonable doubt, your verdict should be guilty.

You must be fair to the defense and at the same time you must be fair to the prosecution. Come in with a verdict that will reflect a fair and impartial consideration of the guilt or innocence of these defendants, based solely on the evidence in the case.

There are three men on trial here. You must consider each case as standing "on its own bottom," and the evidence in each case must satisfy you beyond a reasonable doubt of that particular defendant's guilt before you are warranted in finding him guilty.

Requests to Charge—Exceptions

448 So, therefore, your verdict in this case will be one of the following: You may convict these defendants as charged, the three of them. You may acquit these defendants. You may find each defendant guilty or not guilty. You will render a separate verdict in each case, of guilty or not guilty as charged. Or you may convict a defendant of one or more counts in the indictment. So that your verdict will be: not guilty, guilty as charged, or guilty of one of the counts in the indictment, as the evidence appears.

Come in with a verdict that speaks the truth.

449 Any exceptions or requests? If there are many I will excuse the jury.

Mr. Brodsky: Just one request, your Honor, in a little elaboration of what your Honor said about the duty rests upon the district attorney to prove these defendants guilty beyond a reasonable doubt, and that the burden of proof never shifts. All I want is a little elaboration of that, Judge, to the effect that there is no duty upon the defendants to prove or disprove anything.

The Court: I so charge, gentlemen.

Mr. Brodsky: I have three exceptions, which I would like to make in the absence of the jury.

450 The Court: You may make them now if there are only three.

Mr. Brodsky: One is, I believe, an error on the part of the court, an inadvertent error in its resume of the evidence, wherein the court said that there was one man in front and two in the back. I believe the testimony is that there were two in the front and one in the back. The jury will be guided by its own recollection.

Requests to Charge—Exceptions

The Court: The jury will be guided by their own recollection. They are not bound by the court's recollection at all. 451

Mr. Brodsky: I except to that portion of the charge wherein the court considers the question of the interest of the complaining witness in this case. I also except to the recounting only of the direct evidence of the People and not the cross-examination.

The Court: There is one thing that I forgot, gentlemen, that I think should be called to your attention. No juror should concern himself in the slightest degree with the question of punishment in determining the guilt or innocence of the defendants. That is no concern of yours. I think I have made it plain. Need I say more? All you do is decide the guilt or innocence of these men, nothing else. You are not here to punish them, you are not here to excuse them. You are just here as a fact-finding body. You report to me what the verdict is, based on the facts in the case. Do not permit anybody to talk about punishment in the jury room under any circumstances. If any juror raises that question, you remind him about what Judge Leibowitz said about that subject. 452

I think I will at this stage send the jury out to lunch. It is exactly one o'clock. Then when the jury returns to the court house the alternate juror will be discharged from any further consideration of the case, with the thanks of the court. The other twelve jurors will be taken to their jury room, and after the door shall have been closed and they are in private, then they may start their deliberations on the verdict in this case. 453

That verdict will be not guilty, guilty as charged,

152

Verdict

454 or guilty of one or more counts in the indictment in each case.

All right, you may retire, gentlemen. Remove the defendants.

(The defendants were about to be removed.)

Mr. Brodsky: Before the defendants are removed, may we have a stipulation about the statements.

455 The Court: Yes; leave it with the clerk. If you want any of the pictures or any of the exhibits, you can have them. I believe the pictures are in evidence.

Mr. Helfand: We left them all with the clerk of the court.

The Court: Yes; both sides consent if you want either the pictures or the exhibits, tell Mr. Hall and he will bring them into you.

Go and have your lunch, gentlemen. Don't discuss the case while you are at lunch. Don't say a word about it. Wait until you get into your jury room.

456 (The jury retired at one p.m. and returned at 3:05 p.m. The defendants were in court with their counsel, Mr. Brodsky. Mr. Helfand was present representing the district attorney.)

The Court: Take the verdict.

(Roll called.)

The Clerk: Gentlemen of the jury, have you agreed upon a verdict? Mr. Foreman, please rise.

Verdict

The Foreman: Yes.

The Clerk: What is your verdict as to the defendant Louis Loffredo? 457

The Foreman: Guilty.

The Clerk: Guilty as charged?

The Foreman: Of the charge.

The Clerk: Harken to your verdict as the court records it. You say you find the defendant Louis Loffredo guilty as charged and so say you all. What is your verdict as to the defendant Anthony Bruno?

The Foreman: As to Bruno, as charged.

The Clerk: You mean you find the defendant Bruno guilty as charged? 458

The Foreman: Yes.

The Clerk: Harken to your verdict as the court records it. You say you find the defendant Anthony Bruno guilty as charged and so say you all.

The Foreman: Yes.

The Clerk: What is your verdict as to the defendant Dominick Carlucci?

The Foreman: Guilty as charged.

The Clerk: Harken to your verdict as the court records it. You say you find the defendant Dominick Carlucci guilty as charged and so say you all.

The Foreman: Guilty as charged.

Mr. Brodsky: May I have the jury polled, your Honor? 459

The Court: Poll the jury.

The Clerk: When I ask you the question, please speak up loud so it can be recorded, each answer.

William H. Reddon?

Mr. Reddon: Sir?

The Clerk: You say you find the defendants Louis Loffredo, Anthony Bruno and Dominick Carlucci guilty as charged. Is that your verdict?

154

Verdict

- 460 Mr. Reddon: Yes.
The Clerk: Olaf A. Nosland, is that your verdict?
Mr. Nosland: Yes, sir.
The Clerk: Horatio P. Michaels, is that your verdict?
Mr. Michaels: Yes.
The Clerk: Howard Decker, is that your verdict?
Mr. Decker: Yes, sir.
The Clerk: John M. Cotter, is that your verdict?
461 Mr. Cotter: Yes, sir.
The Clerk: Benjamin W. Cohen, is that your verdict?
Mr. Cohen: Yes.
The Clerk: Max Kornreich, is that your verdict?
Mr. Kornreich: Yes, sir.
The Clerk: Chester C. Smith, is that your verdict?
Mr. Smith: It is.
The Clerk: Robert J. Bennett, is that your verdict?
Mr. Bennett: Yes, sir.
462 The Clerk: Ellis C. Liesenberg, is that your verdict?
Mr. Liesenberg: It is.
The Clerk: George F. Hogan, is that your verdict?
Mr. Hogan: Yes, sir.
The Clerk: Robert H. Blauth, is that your verdict?
Mr. Blauth: It is.
The Clerk: And so say you all.

155

Motion to Set Verdict Aside

Mr. Brodsky: At this time, if your Honor
pleases, I respectfully move to set aside the ver- 463
dict on the ground that the same is contrary to law,
contrary to the weight of evidence, and on all the
other grounds specified in the Code of Criminal
Procedure.

The Court: Motion denied.

Mr. Brodsky: Exception.

464

465

156

Plea Before Sentence

COUNTY COURT
OF THE COUNTY OF KINGS

PART I

THE PEOPLE OF THE STATE OF NEW YORK,

—against—

ANTHONY BRUNO,

Defendant.

467 Before:

HON. SAMUEL S. LEIBOWITZ,
County Judge.

Indictment No. 842/1947.

Brooklyn, N. Y., September 3, 1947.

Appearances:

MR. JULIUS HELFAND,
Assistant District Attorney, for the People.

468

MR. ABRAHAM H. BRODSKY, *for the defendant.*RALPH E. ROBERTS,
Official Stenographer.

157

Plea Before Sentence

The Court: Arraign the defendant on the information. 469

(The information was read to the defendant by the clerk.)

The Court: The Court will now advise you as to your rights. You have a right to stand mute, refuse to answer or deny that you are the man mentioned in the information and were so convicted as alleged therein; in which event you will be entitled to a trial by jury to determine the issues so created. Or you may admit that you are the man mentioned in the information and were so convicted as alleged therein, in which event the Court will declare you to be a third felony offender. You stand here represented by Mr. Abraham Brodsky, your attorney. You may consult with him and after your deliberation announce your decision in the premises. 470

(Consultation).

The Clerk: Are you the same person mentioned in the several records in the information?

The Defendant: Yes. 471

The Clerk: Were you convicted and sentenced as set forth therein?

The Defendant: Yes, sir.

The Court: The defendant is therefore adjudged to be a third felony offender.

Mr. Helfand: May I be heard for a moment, your Honor? Your Honor has this defendant, Anthony Bruno, before you for sentence on con-

Plea Before Sentence

472 viction of robbery in the first degree, together with one Carlucci and one Loffredo, both of whom are also to be called before you this morning for sentence. I would like to advise the Court that in the opinion of the District Attorney this defendant and the two other defendants who were convicted of the robbery for which they are to be sentenced this morning, are in a position to give valuable information to the law enforcement authorities of this county, which information we believe would help in clearing up a number of murders which have been committed, particularly in the Bath Beach section of this county, in the last few months. Mr. Joseph Hoey, of our office, one of the assistants of our office, who has been assigned to those investigations, is here in court now, and we believe that this defendant and the other defendants in this case are in possession of this information, that when given to us could be of great value, and we will be in a position to urge consideration for them. The defendant Loffredo's own brother was killed some weeks ago, and a few days ago a man by the name of Tuffarelli was killed here in Brooklyn; all of which is tied up in one pattern. And in addition to those murders, these defendants are in a position to clean up a number of important robberies which were committed in the last year. I have in mind not only the robbery for which they stand convicted, but I have in mind also the robbery of the Brooklyn Daily Eagle, and a number of other important robberies in this county which have been unsolved at the moment. The other two defendants, Carlucci and Loffredo, together

473

474

Plea Before Sentence

with this man, I think should see the light and talk to the District Attorney and to our assistants who are in charge of this matter, under the direction of Mr. Hoey, and disclose the information which we think, based upon information that we have, would be the key to solving these unsolved crimes. I want to make this statement to your Honor so that you may be in a position to be advised of the situation, particularly affecting one man that appeared before you for sentence today.

475

The Court: What is your desire, Mr. Helfand?

476

Mr. Helfand: So far as this defendant Bruno is concerned, I am advised by the Court that the probation report concerning him is not complete—there are some matters which have not been submitted to your Honor, and so I understand that his sentence will be deferred. I don't know how long—a week or two weeks.

The Court: In other words, you are asking that his sentence be deferred?

Mr. Helfand: That is right.

The Court: But not the other two?

Mr. Helfand: No; so far as the other two defendants are concerned, I ask your Honor, when you impose sentence in those cases, on the Carlucci and Loffredo cases, that whatever sentence you do impose that you stay the immediate execution of your sentence, and that the commitment be held up so that these men may be kept here in the city prison in Brooklyn for a reasonable time. Perhaps during that time they will come forward with the information which we are

477

Plea Before Sentence

478 most anxious to get, and which we believe they have and are able to give us.

The Court: The probation department informs me that at least two of the defendants have been persuaded that they are going to beat the rap on an appeal, and that they have been sold that idea that they are going to beat it on appeal, so that they need not talk, they need not unburden themselves of all of this valuable information to which you make reference.

479 Mr. Helfand: May I interrupt the Court at this moment to add this observation? There has been some rumor to that effect, that they are hopeful that on an appeal they will reverse this case. Of course I am not a member of any of the appellate courts, but I tried this case myself and I am most confident that this conviction will stand and will be affirmed. In addition to that, they may know from me that there are other matters with which our office is concerned on which they may be prosecuted. In addition to that there is a case pending in Queens County where they held up a gasoline station, where a policeman was shot during the holdup, and that case is a case which even they know that they
480 could not possibly have any hope at any time that they could beat—it is an open and shut case against them. All of these things are facing them now: This sentence, the case in Queens County, and other matters before us. This is the time—I came here this morning so that they may know publicly that this is the time that they can come forward and help the district attorney, and, through that, possibly help themselves.

161

Plea Before Sentence

The Court: During the course of the investigation by the probation department, Captain of Detectives McNally, states that if these three defendants will unburden themselves and give information which they possess—to put it in the words of Captain McNally—it would make Murder Incorporated look like a penny ante affair. That is the phrase that the captain used. Now, if we are flowering a new gang of murderers, I agree wholeheartedly with the district attorney that if we can nip it in the bud, we can crush it out, in a manner provided by law, we will have rendered a service to the community. It is a horrible thing to decent citizens of the community to have their home town made a battle ground by these murderous gangsters, for that is all they are. And when they do come before this Court they will feel the crushing hand of the law fall down on them in no uncertain terms. 481

The District Attorney, Bruno, has asked that your sentence be postponed. He has reasons for that. If you come back here and if I have to impose sentence, I will give you sixty years in Sing Sing Prison. 482

All right; sentence is postponed. 483

162

Sentence of Anthony Bruno

COUNTY COURT
OF THE COUNTY OF KINGS

PART I

THE PEOPLE OF THE STATE OF NEW YORK,

—against—

ANTHONY BRUNO,

Defendant.

485 Before:

HON. SAMUEL S. LEIBOWITZ,
County Judge.

Indictment No. 842/1947.

Brooklyn, N. Y., September 12, 1947.

Appearances:

MR. HOEX, *Assistant District Attorney, for the
People.*486 MR. ABRAHAM H. BRODSKY, *for the Defendant.*RALPH E. ROBERTS,
Official Stenographer.

The Court: Bring him up here.

(Defendant brought up to the bench.)

Mr. Hoey: Your Honor, at this time the People
request the defendant, Anthony Bruno, be sen-
tenced at this time. On last Wednesday when

163

Sentence

Bruno, this defendant, Loffredo and Carlucci were brought up for sentence your Honor sentenced both Carlucci and Loffredo but deferred sentence on Bruno so that he might possibly cooperate with the People. Up to the present time we have received no cooperation whatsoever from this defendant. The People feel that he will not cooperate with us, and I respectfully request that he at this time be sentenced. 487

The Court: I am not penalizing him because he is not cooperating. I am going to impose the sentence which the crime calls for, the same as in the Loffredo and Carlucci cases. I thought if they did cooperate some leniency might be shown, but he is well deserving of the sentence I shall impose because of the crime committed plus his previous record. 488

Mr. Hoey: I did not want to give the impression he was to be penalized. I just wanted to give you the understanding he has not cooperated with us—gets this affirmative sentence, and no longer sentence—and we will go ahead.

The Court: Arraign this defendant for sentence? Has he already been arraigned as a third offender?

The Clerk: Yes. 489

(The defendant was arraigned for sentence and asked the usual formal question.)

Mr. Brodsky: The defendant is ready for sentence.

The Court: The court sentences the defendant to State's Prison for a term of no less than thirty years nor more than sixty years. The execution of the sentence is stayed until further order of the court. The defendant is to be returned to the place from whence he came.

Sentence of Dominick Carlucci:

490

COUNTY COURT
OF THE COUNTY OF KINGS
PART I.

THE PEOPLE OF THE STATE OF NEW YORK,

—against—

DOMINICK CARLUCCI,

Defendant.

491 Before:

HON. SAMUEL S. LEIBOWITZ,
County Judge.

Indictment No. 842/1947.

Brooklyn, N. Y., September 3, 1947.

Appearances:

MR. JULIUS HELFAND,
*Assistant District Attorney, for the People.*492 MR. ABRAHAM H. BRODSKY, *for the Defendant.*RALPH E. ROBERTS,
Official Stenographer.(The information was read to the defendant by
the clerk.)The Court: The Court will now advise you as
to your rights, Mr. Carlucci. You have a right to

Sentence

stand mute, or refuse to answer, or deny that you are the man mentioned in this information, and were heretofore convicted as alleged therein; in which event you will be entitled to a trial by jury. Or you may admit that you are the man mentioned in the information and were so convicted as alleged therein, in which event the Court will declare you to be a second felony offender. You stand here represented by your attorney, Mr. Brodsky. You may consult with him and after due deliberation announce your decision in the premises. 493

(Consultation with Mr. Brodsky.) 494

Mr. Brodsky: Admits his identity, if your Honor please, admits he was so convicted.

The Clerk: Are you the same person so mentioned in this information here read to you and were you convicted and sentenced as alleged therein? What is your answer?

The Defendant: What?

The Clerk: Were you convicted and sentenced as alleged in this information which has just been read to you, in 1934?

The Defendant: That is right.

The Court: The Court adjudges the defendant to be a second felony offender. Arraign the defendant for sentence. 495

(The defendant was arraigned for sentence and asked the usual formal question.)

Mr. Brodsky: The defendant is ready for sentence.

Sentence

496 The Court: Want any time to think it over,
Mr. Carlucci—just yes or no.

The Defendant: I did think it over.

The Court: You want to postpone your sentence for a while?

The Defendant: No, sir: I want to be sentenced right now.

497 The Court: All right. In 1929 this defendant was convicted of stealing an automobile. The Court of General Sessions put him on probation for two years. In 1929, later that year he was again convicted of larceny and he was sentenced to Napanoch. In 1929 he was charged with violating 1897 of the Penal Law and the grand jury failed to indict. In 1931 the General Sessions Court held him for violation of probation. Probation was extended for two years. It expired in 1933. However, in 1932 he was arrested for stealing an automobile and he was discharged. In 1933 he was arrested for having a gun and was discharged. In 1934 he was arrested for attempted extortion and he was discharged. In 1934 he was convicted in this court of attempted robbery in the second degree and he was sentenced to Elmira, transferred from there to Woodburn, and then paroled in 1938. In 1941 he was arrested in Miami Beach, Florida, for vagrancy and received a suspended sentence of thirty days. In 1934 he was locked up for a stickup—that is, assault and robbery—and the magistrate discharged him. In 1944 he was also arrested for having a gun. The grand jury failed to indict.

498 When this case appeared on the calendar before Judge Goldstein, the identifying witness was so terrorized by the agents of these defen-

Sentence

t over,

ur sen-

be sen-

endant

le. The

robation

r he was

entenced

th violat-

and jury

Sessions

ion. Pro-

t expired

ested for

ischarged.

n and was

d for at-

arged. In

attempted

s sentenced

Woodburn,

he was ar-

r vagrancy

thirty days.

p—that is,

istrate dis-

rrested for

l to indict.

calendar be-

ing witness

these defen-

dants that he was in mortal fear of his life, and it required a lot of assurance from the Court and the prosecuting officials before the witness was prepared to take the stand and testify. He testified and he made a splendid witness. The jury was undoubtedly impressed with the veracity of this witness. Of course DiBari, would hardly be likely to reveal who these people are who put the pressure on him, and he would be inclined, I imagine, at the present moment, to say as little as he can about it, because DiBari is still living in the community, and things may happen to him if he involves the people who tried to put a fix in. That is understandable. The Court has before it a very voluminous report, furnished by the probation department. The report seems to indicate that this defendant is a member of a murder gang, a gang that makes murder and robbery its chief occupation. The report also seems to indicate that this is not the only stickup in which the defendant was involved. There are many, each one conducted in Wild West fashion, with flashing guns, and with the usual technique that the stick-up man employs. The report also seems to indicate that this defendant is an unregenerate criminal. He is sentenced to a term of thirty to sixty years in State's Prison. The execution of the sentence will be postponed until further order of the Court. Let the clerk make a note of that. Come back here for a moment, Mr. Carlucci.

499

500

501

(The defendant brought back.)

The Court: Bruno's sentence has been postponed.

Sentence

502 The Defendant: What do you want me to do about it?

The Court: Keep quite, please. Do you know Mrs. Loffredo?

The Defendant: Sure I know her.

The Court: However, I am going to hold up the execution of your sentence for a period of time. You know the score just as well as anybody else.

503

504

Sentence of Louis Loffredo

COUNTY COURT
OF THE COUNTY OF KINGS

505

PART I.

THE PEOPLE OF THE STATE OF NEW YORK,

—against—

LOUIS LOFFREDO,

Defendant.

Before :

506

HON. SAMUEL S. LEIBOWITZ,
County Judge.

Indictment No. 842/1947.

Brooklyn, N. Y., September 3, 1947.

A p p e a r a n c e s :

MR. JULIUS HELFAND,
Assistant District Attorney, for the People.

MR. ABRAHAM H. BRODSKY, *for the Defendant.* 507

RALPH E. ROBERTS,
Official Stenographer.

(The information was read to the defendant by
the clerk.)

The Court: You have a right to stand mute,
refuse to answer or deny that you are the man

t me to do

, you know

to hold up
a period of
well as any-

Sentence

508 mentioned in the information and were so convicted as alleged therein; in which event you will be entitled to a trial by jury. Or you may admit that you are the man mentioned in this information and were so convicted as alleged therein; in which event the Court will declare you to be a second felony offender. You stand here represented by Mr. Abraham Brodsky, your attorney. You may consult with him and then announce your decision in the premises.

The Defendant: Yes; I was.

509 The Clerk: Are you the same person mentioned in the several records of the information? Are you the same person?

The Defendant: Yes.

The Clerk: And were you convicted and sentenced as set forth therein?

The Defendant: Yes.

(The defendant was arraigned for sentence and asked the usual formal question.)

Mr. Brodsky: The defendant is ready for sentence.

510 The Court: This defendant started out as a criminal—that is, his first contact with the law was in 1929. He is now 31. He started pretty young as a thief. In Children's Court he was given a suspended sentence and put on probation. In 1930 he was in again for being a thief and this time it was a stolen automobile and again he was put on probation. In 1933 he then was in the Court of Special Sessions for unlawful entry and he was acquitted. That same year he was arrested for petit larceny and he was discharged

Sentence

so con-
you will
y admit
nforma-
rein; in
to be a
e repre-
ttorney.
nnounce

son men-
rmation?

and sen-

sentence

ty for sen-

out as a
h the law
ted pretty
rt he was
probation.
ief and this
d again he
hen was in
awful entry
ear he was
discharged

in the Magistrates' Court. In 1934 he was in this court for attempted burglary and burglars' tools and the judge then presiding dismissed the indictment. In 1934 he was again indicted for a stick-up. This time he was sentence to Elmira. He was paroled in 1936 and again he was convicted for attempted robbery. This time he received a five to ten years suspended sentence and was put on probation. In 1936 he violated his parole, he was returned to Elmira. He was paroled again in 1942. However, in 1943 he again violated his probation. This time I understand one of the felonies of which he was convicted resulted in the court revoking the conviction and permitting him to plead guilty to petit larceny. I understand that the defendant claims that on some prior conviction he was not represented by counsel. Is that correct?

511

The Defendant: No.

The Court: Am I wrong about that?

Mr. Brodsky: I don't know anything about that, Judge.

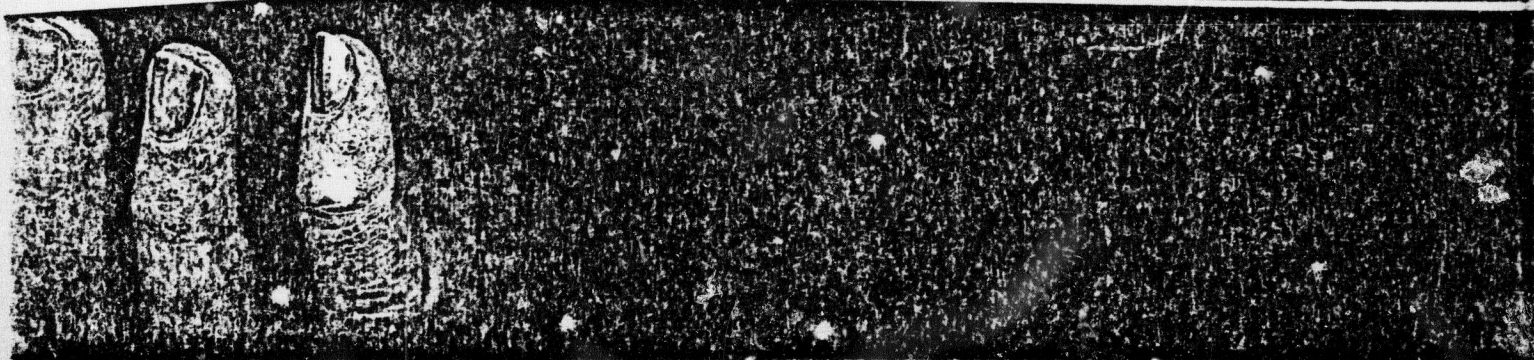
The Court: At any rate the second conviction was reduced to a misdemeanor.

The Defendant: Yes, sir, your Honor. Can I explain?

512

513

The Court: I am just interested in the technical procedure that prevailed. It does not really matter. In 1944 he was arrested for assault and robbery and discharged, and again 1944 he was arrested for vagrancy and discharged. I see now from a reading of the probation report that the reason why he was permitted to plead guilty to a misdemeanor by Judge Goldstein was to give him an opportunity to go into the Army, and the



Sentence

514 Army rejected him because of his past criminality.

The report seems to indicate that this defendant is a member of a robbery and murder gang that has been operating in the city for a number of years, a gang of unregenerate criminals. No purpose will be served by a recital of all of the details of the defendant's machinations and his connection with the gang and its several members. Suffice to say that his entire record indicates that he is an unregenerate criminal and that in his case the sentence of the Court should be a term of thirty to sixty years in State's Prison. It is so ordered. Execution of the sentence is stayed until further order of the Court.

515 Mr. Brodsky: Judge, the defendant has expressed a desire to talk to his brother and his wife. May he do so?

The Court: Not here in this courtroom. We have no facilities at the present time. He can do that in Raymond Street Jail. I am holding off the execution of the sentence, Loffredo, at the request of the District Attorney. Bruno has been sent to another jail. He has not been sentenced at all.

516 Loffredo: I have nothing but—

The Court: Just say nothing. You have got a lawyer here and he can represent you ably and well. I am merely trying to give you some information. Your brother was murdered?

Loffredo: Yes, sir.

The Court: You have a very fair idea who did it. Don't say anything. There have been other murders in Brooklyn all connected with that same gang. Now sometimes a man thinks that the

Sentence

proper course of procedure is to go up to Sing
Sing and do a thirty to sixty year sentence and
play the part of a hero. 517

(The defendant makes some unintelligible
response.)

The Court: Don't say anything, please. I am
not asking you to say anything. I am merely
trying to put some sense into your head. The
report that I have before me from the probation
department, and the personal report that they
have made to me, seem to indicate that you are
sanguine about the whole thing because you ex-
pect to beat it up on appeal. Well, a man has a
right to an appeal. Nobody is holding that
against you. But you may help yourself not only
in this matter but in other stickups in which you
are allegedly involved, by cooperating with Dis-
trict Attorney McDonald and Mr. Helfand and
Mr. Hoey, in cleaning up some of these murders
that have happened in the last few months. If
you do you will be entitled to consideration, sub-
stantial consideration, not only in this case but
in the other cases that the authorities are con-
templating by way of prosecution. If you want to
die in jail, that is your lookout. Every man can
live his own life. If you want to rot up in Sing
Sing until they bury you, that is your lookout.
But I do know that you are eager, from what the
police tell me and the probation officer tells me,
that you are eager, at least, to see to it that the
killers that murdered your brother do not go scot-
free. I know what you said, that if you had the
opportunity you would kill them yourself. And 518
519

riminal-

s. defen-
der gang
number
als. No
all of the
s and his
ral mem-
cord indi-
d and that
ould be a
Prison. It
e is stayed

at has ex-
er and his

room. We
He can do
holding off
edo, at the
mo has been
n sentenced

on have got
ou ably and
ou some in-
red?

idea who did
ve been other
ith that same
inks that the

Sentence

520 that is a natural impulse that a man of your type would have. Now, you wear a black tie. You are in mourning for your brother. You know, they just mowed him down. Was it a machine gun that was used in that case?

Mr. Brodsky: No.

The Court: How many bullets did they put into him?

Mr. Helfand: Four, I think.

The Court: Took him for a ride?

Mr. Helfand: Yes.

521 The Court: Now, I am ready to help you, Lofredo, not because you are a good fellow, because you know what you are. There is no necessity of going into that, but I am ready to help you for the benefit of the community, so that we can crush out this gang of killers that is operating, especially around the Bath Beach section. If you want help you will get a really good break from me—not because you deserve it as an individual, but because of the good that can come if you will only unseal those lips of yours. Jim McNally tells me that what you people can tell would make Murder, Incorporated, look like a penny ante game. Jim McNally is a good cop and knows his business. You know that. Listen—why not
522 get some sense into your head? Why not go down to Raymond Street Jail—if you don't want to go to Raymond Street, I will send you to some place. Think it over. Let us lay our hands on the fellows that killed your brother. Let us clean up some of the things that happened, and I will give you plenty of consideration. Now, that is pretty fair, isn't it? If you want to do it along that line

Sentence

we will see to it that you get protection. Don't worry about that. The Hawk is up in Sing Sing, isn't he? You know the Hawk? 523

Loffredo: Yes.

The Court: You know him well. He was a member of your gang.

(The defendant smiles.)

The Court: Nobody is touching the Hawk up there, and he talked plenty. If we had just another little bit of evidence, Vito Genovese would have died in the electric chair. It was just too bad there was not a little corroboration. So I am going to do this: I am going to let you stay down in Raymond Street and think it over a little bit. Maybe you would at least want to see to it that the fellow that mowed down your brother—at least—he is brought in. You know who they are, too, if you only talk. All right. 524

525

type
You
know,
machine

put

you, Lof-
, because
necessity
p you for
can crush
ating, es-
● If you
reak from
individual,
if you will
McNally
ould make
enny ante
and knows
—why not
ot go down
want to go
some place.
on the fel-
is clean up
I will give
at is pretty
ng that line

Affidavit of No Opinion

532 STATE OF NEW YORK,
COUNTY OF NEW YORK, ss.:

ABRAHAM H. BRODSKY, being duly sworn, deposes and says:

I am the attorney for the appellants herein, and I am familiar with all the proceedings in this action.

That no opinion or memorandum was rendered by the Court below in this case.

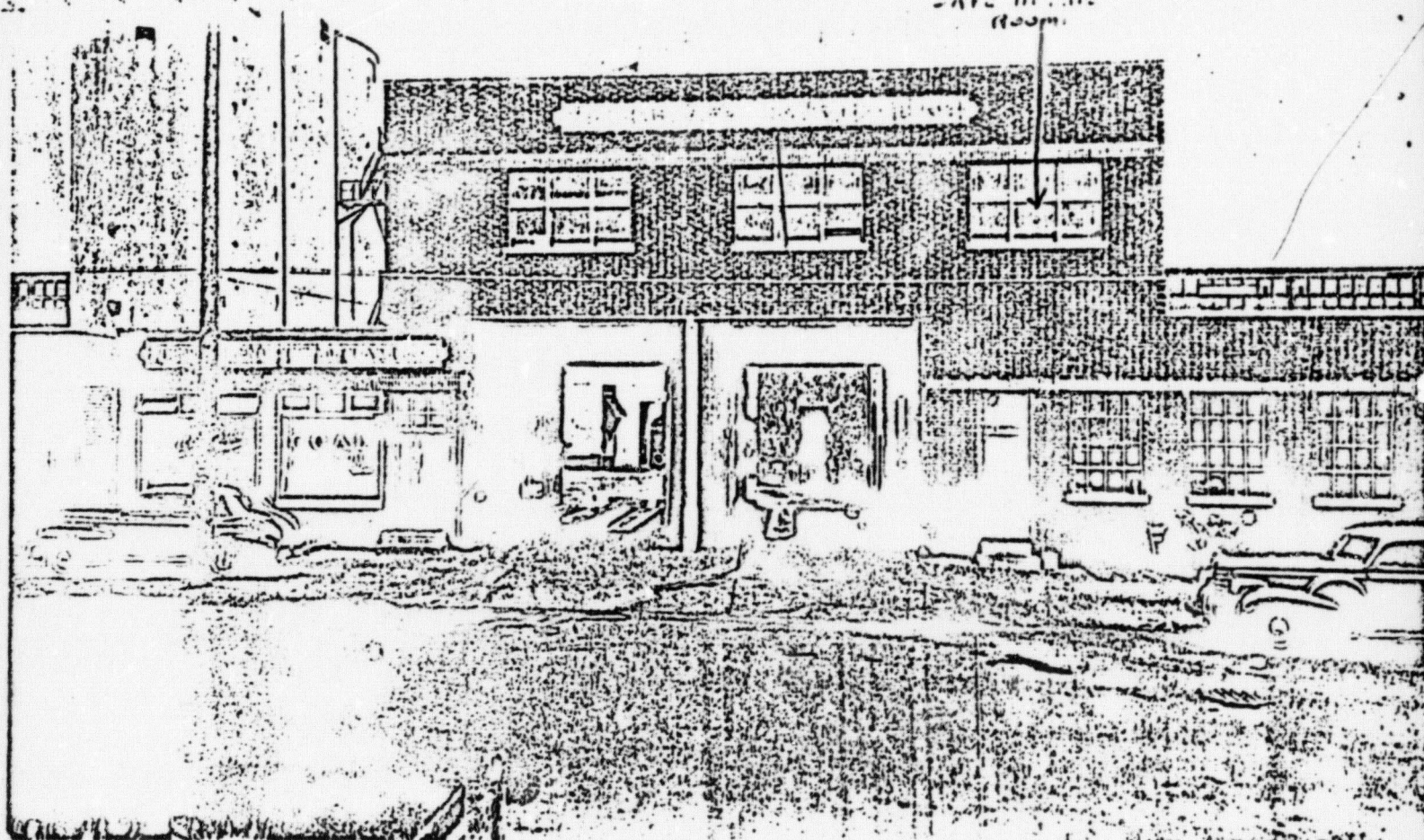
563

ABRAHAM H. BRODSKY

Sworn to before me this
day of January, 1948.

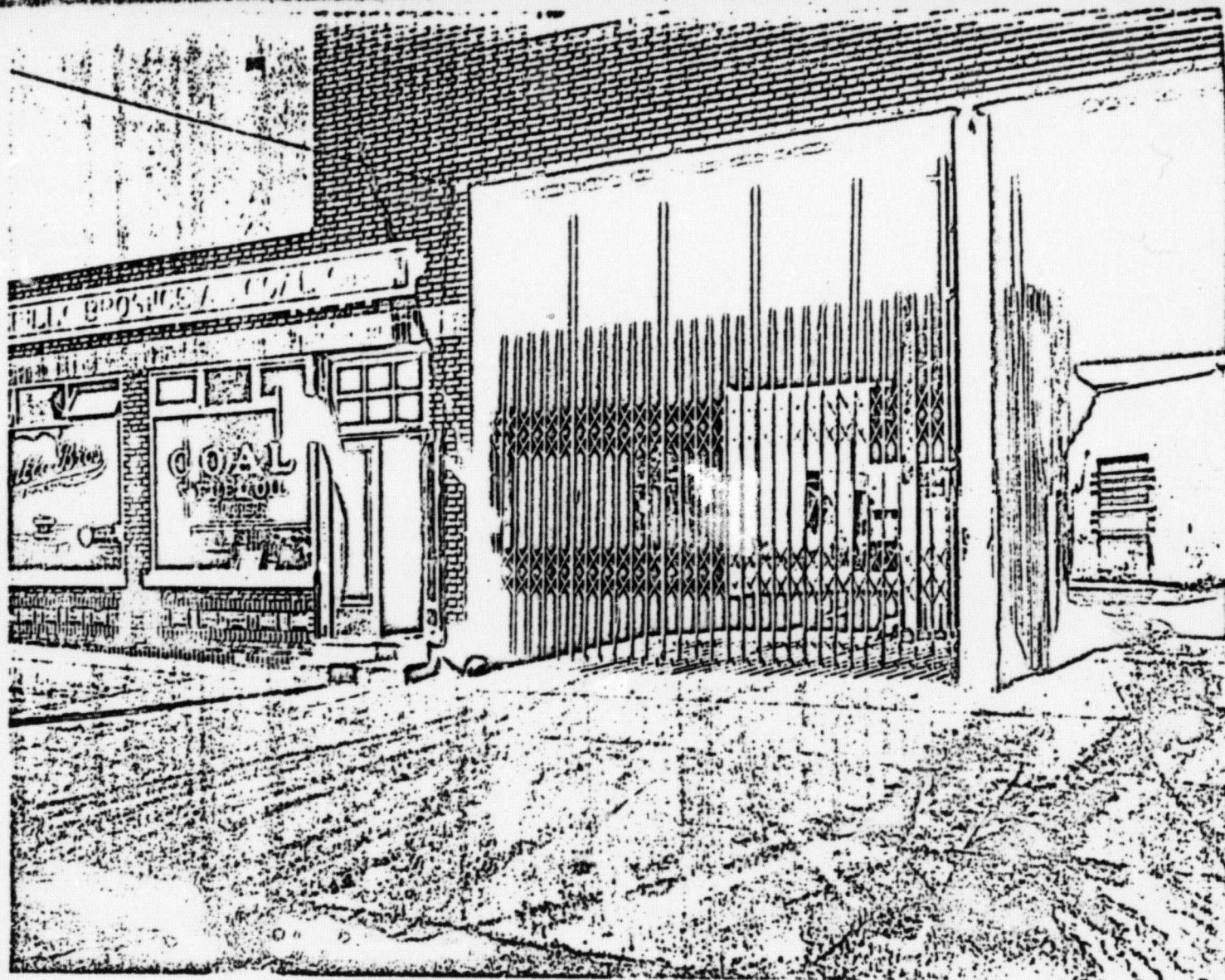
BENJAMIN H. CHASIN
Attorney & Counsellor at Law
Residing in Kings County
Commission expires March 30, 1948

564

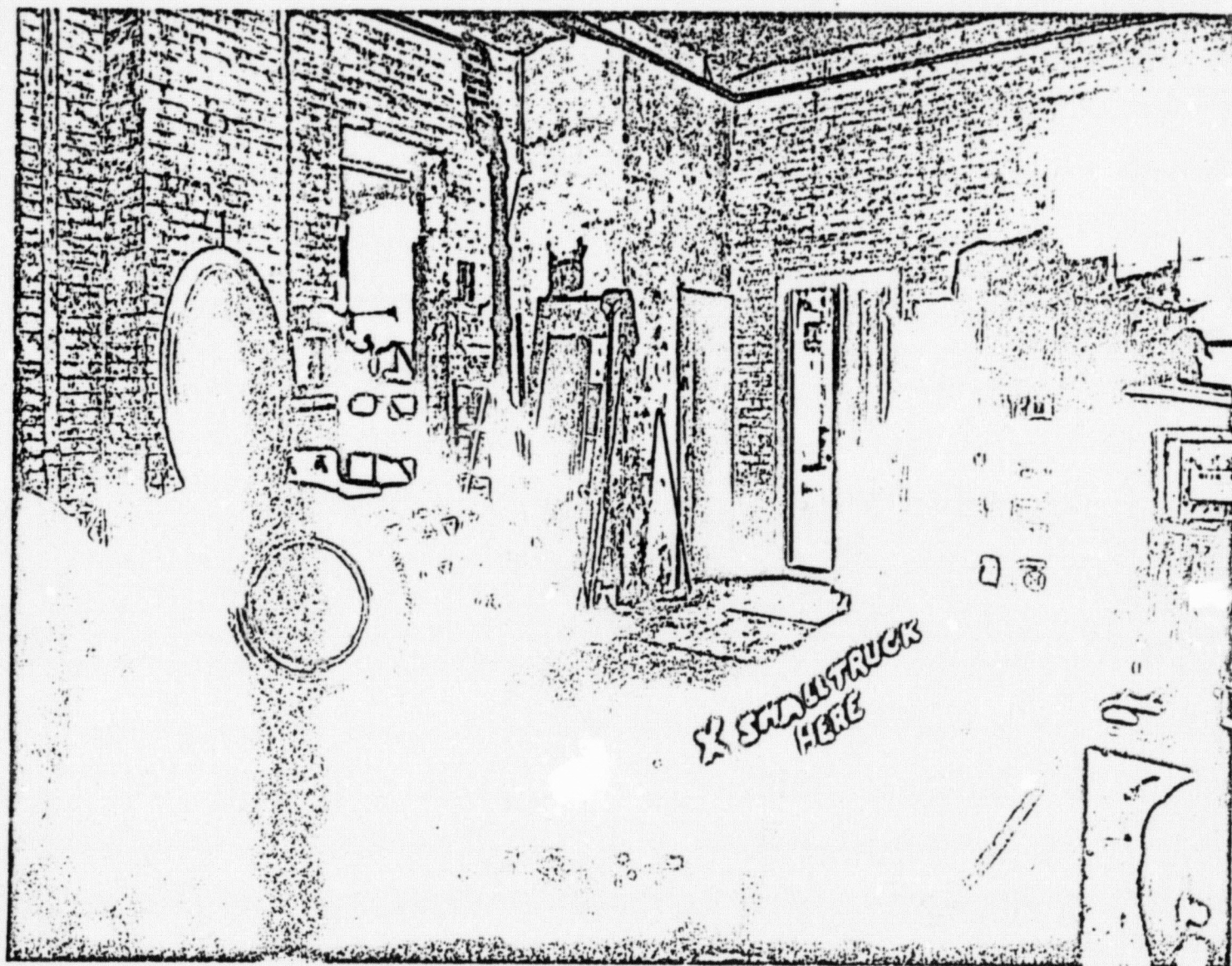


175

BEST COPY AVAILABLE

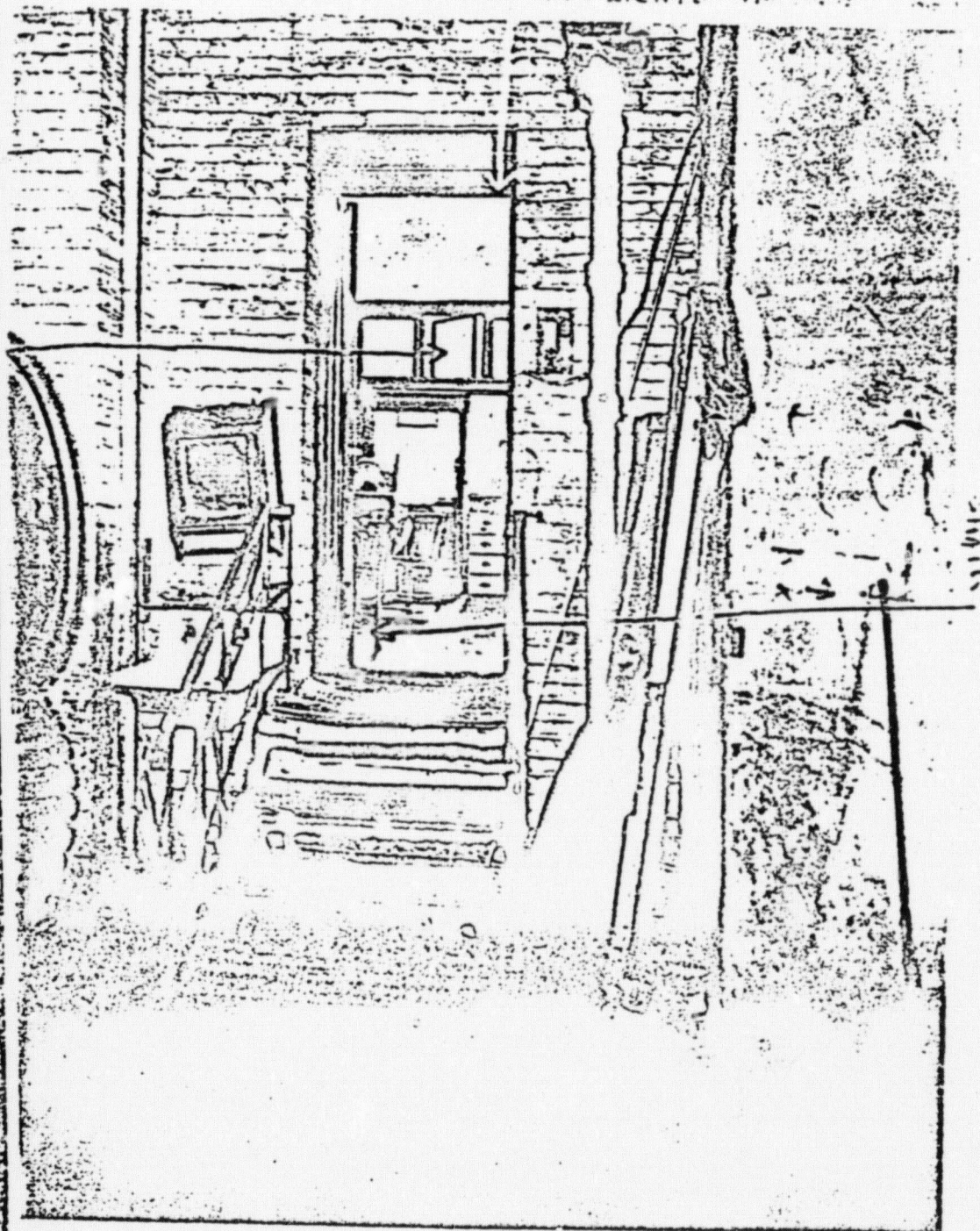


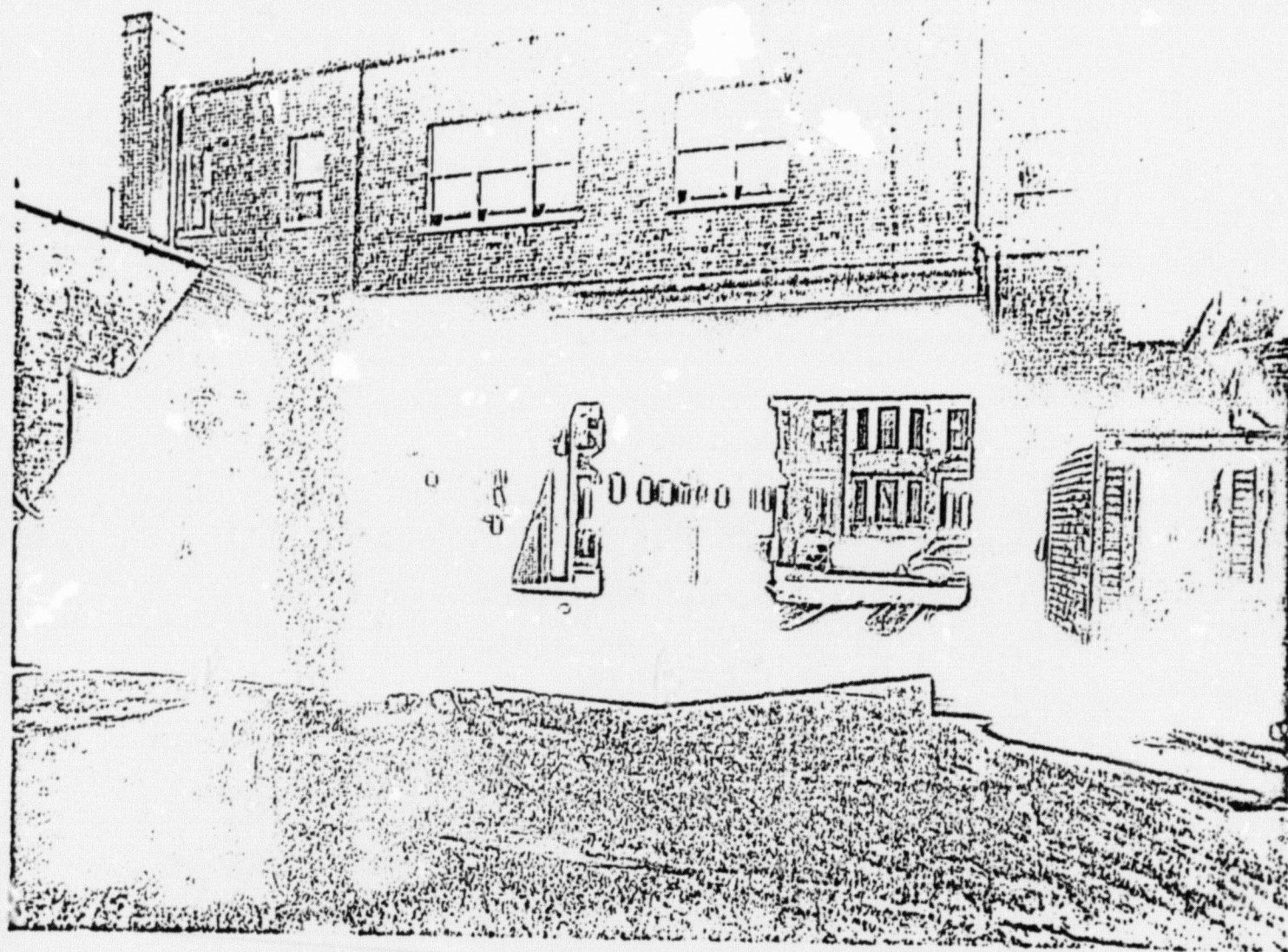
176



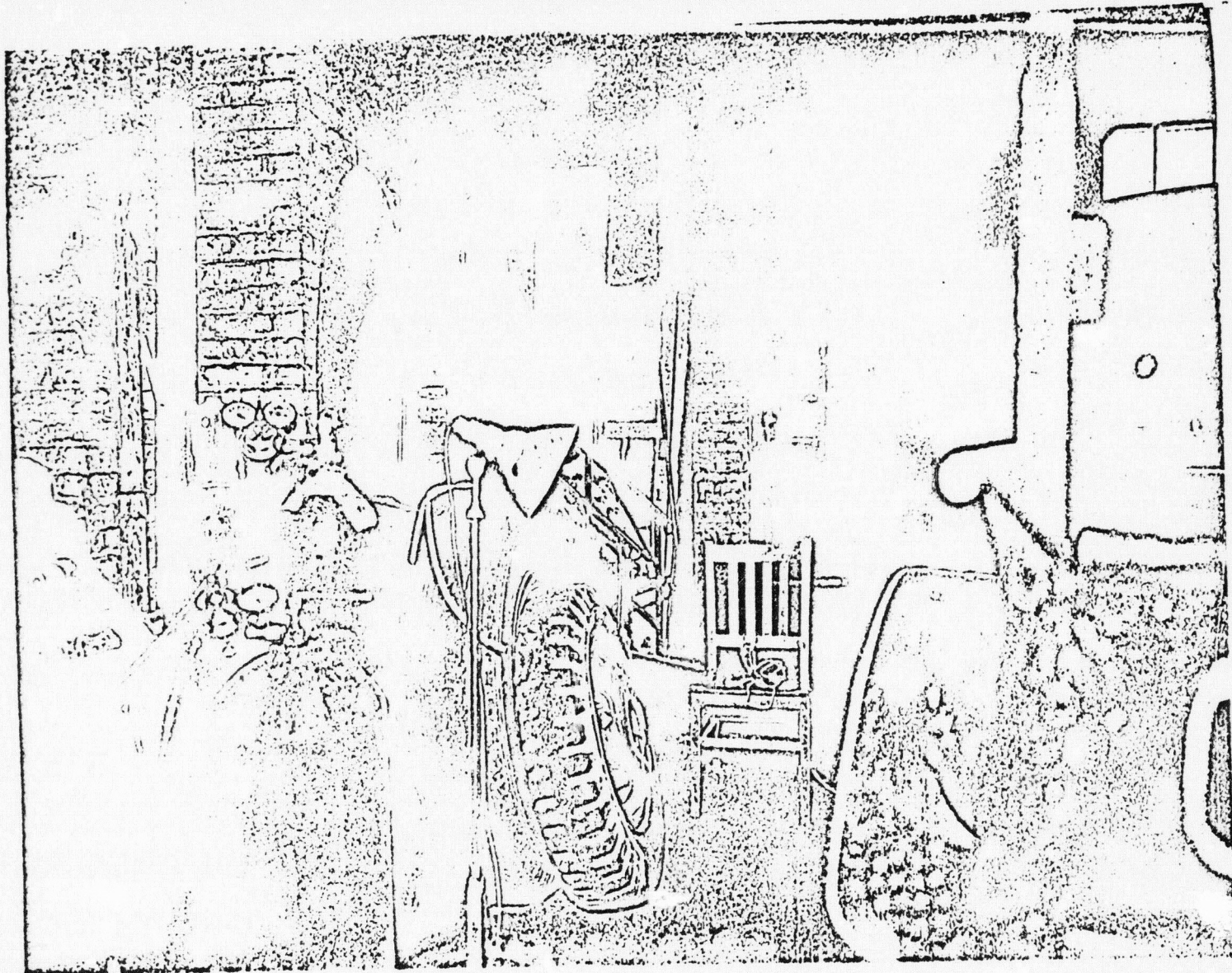
177

END OF TWO REVER LINES 10 11 12





179



180

Supreme Court
County of Kings.

The People of the State of
New York.

against
Anthony Bruno.
Defendant.

Petition for
a writ of error
Coram vobis.

your petitioner Anthony Bruno
respectfully alleges.

1. That your petitioner was the defendant
in the above entitled action.

2. That your petitioner was indicted for
the crime of robbery first degree, Grand
larceny first degree and assault second
degree as set forth in Ind. #842/1947.
was convicted after trial of the charges set
forth in the indictment and sentenced to
State prison on September 12, 1947 as a third
felony offender to a term of thirty years to
sixty years and is presently serving said
sentence at Dannemora State Hospital.

3. That the States evidence against your
petitioner and his two Co. defendants consisted
in the main of the testimony of Vincent Di Bari,
the victim and the States only witness.

Filed 9/1/47

4. That your petitioner and his two co-defendants Louis Loffredo, and Domenick Curlieri, denied knowledge of this Robbery.

5. That the testimony of Vincent Di Bari was induced by perjured testimony knowingly used by the Court after the Court declared a mistrial.

6. Mr. Di Bari went to a felony Court and signed a Complaint under oath, on April 5th 1947. in this Complaint Mr. Di Bari, said he did not see the faces of the Men.

Mr. Helfand Conceded to the Complaint signed under oath, by Mr. Di Bari, on April, 5th 1947. see page 92. of trial minutes.

on May 21 and 22, 1947, we went on trial before the Hon. Louis Goldstein. Judge Goldstein, stated to the witness Mr. Di Bari "you are going to come across and tell the truth here."

Mr. Di Bari. "I am telling the truth."
The Court: "you owe that to the Community to have these three notorious gunmen not let loose in our Community."

Mr. Di Bari. "I did not get 'fixed up' in this thing here."

The Court: "That is the reason I had to declare a mistrial here because of your attitude."

Mr. Di Bari: "I told you before so I won't put you in any trouble or anybody else here. I don't want you to continue with a case where I know I will lie. I told you before I do not want to be in a case."
By the Court.

"I will also tell you this, and for your peace of mind, that these three gunmen will be held in Queens County on another robbery case, where they shot a policeman and almost killed him and they have got their identification there too." See page 31a of Exhibit B, of appendix, To United States Court of Appeals Second Circuit. No 31673.

By Mr. Helfand:

"if he wants to take the stand and lie, he will be confronted with his testimony before the Grand Jury. And if he admits in open court that he is lying, in that event we intend to indict him and prosecute him for perjury." See page 32a.

Point
M

Why not Confront Di Bari with the complaint he signed under oath, on April 5, 1947, long before the alleged threat, and long before he went before the Grand Jury.

By the Court:

"There is no reason why you should take the brunt of this thing because these three gunmen did tie you up. and then robbed the place. and then you come here and say you do not remember how they looked like". see page 33a

Mr. Di Bari. said the same on april 5, 1947, under oath. Mr. Helfand, concede to it.

Mr. Di Bari. was never under oath before Judge Goldstein. see page 29a

The Court: to the Cirillo Brothers. the ice, coal and fuel Corporation. Mr. Di Bari worked for.

"you gentlemen have seen what has taken place here so far in this matter, where you are so vitally concerned about this matter. I wish you would try to talk to this gentleman, for his own good, and that he should stand by the people in this case and to tell the truth about it. because what happened to you people could happen to anybody in our community. and to have these three gunmen defy law and order in our community to this extent,"
see Page 33a 4

Petitioner alleges, The Court used the Cirillo Brothers to have Di Bari testify falsely against petitioner.

after Di Bari signed a complaint under oath on April 5th 1947, long before this alleged threat. Mr Helfand conceded to it. see page 92 of trial minutes.

The Court told Di Bari of a prior criminal record. The Court also told Di Bari, "these three gunmen will be held in Queens County on another robbery case where we shot a policeman and almost killed him, and that they have got an identification there too."

Petitioner alleges. The Court intimidate the witness. I was never indicted or went to court for robbery or a Cop shooting.

Four days later we went on trial before Judge, Lebowitz.

Petitioner alleges: There was no reason to threaten the witness, because an attorney told us about the complaint signed by Mr. Di Bari, on April 5, 1947, about 46 days before the trial.

The defendant also maintains that the identification of the defendants by Mr. Di Cori on two different police stations is invalid since the identification was made without the arrangement of a line up.

See Page 78 + 79 of Trial minutes.
See U.S. v. Wade, - U.S. -, 6/12/67.

Petitioner alleges: that the witness was induced to testify falsely after the Court used fraud, as in order to obtain false testimony. Petitioner alleges as in

People v. Steele, 65 N.Y.S. 2d 214 (1946) that he was deprived of his right to a fair and impartial trial. due process of law. which the Constitution guarantees was denied him.

see Mooney v. Holohan, 294 U.S. 103 (1934) was the federal judiciary declaration that a violation of due process occurred where perjured testimony was knowingly used by the Court.

Point 4 { That your petitioner contends now that the conviction being assailed herein was the result of the fraud perpetrated on the witness by the Court, thereby induced the witness to testify falsely, and your petitioner was pronounced guilty.

remarks made by Judge Leibovitz during the sentencing of co-defendant Carlucci.

"... When the case appeared on the calendar before Judge Goldstein, the identifying witness was so terrorized by the agents of these defendants that he was in mortal fear of his life. And it required a lot of assurance from the court and the prosecuting officials before the witness was called to take the stand and testify..."

see page 166 + 167 of trial minutes

And to think long before the witness went before the Grand Jury, For Di Bari the witness went to a felony Court and signed a complaint under oath. in the complaint, he swore he did not see the faces of the men.

We had no reason to threaten the witness because our attorney told us about the complaint signed by For. Di Bari on April 5th 1947. ~~About~~ ~~at days before the trial.~~

The lawyer told us when he came to visit us in the County Jail.

Helfand said the witness was threatened about two days before the trial of May 21, 1947.

remarks made by Helfand to the Court during the sentencing of petitioner.

"There is a case pending in Queens County where they hold up a gasoline station, where a policeman was shot during the holdup, and that case is a case which even they know that they could not possibly have any hope at any time that they could beat it is an open and shut case against them."

See Page 160 Trial minutes.

Petitioner alleges, Helfand is not telling the truth. I was never indicted or went to Court in Queens County for a cop shooting or robbing a gasoline station.

The Supreme Court said

In Lloyd Eldon Miller, Jr. Case No. 63-C-1426.
February, 1967.

Rare approval. What is the reckoning for a prosecutor who knowingly uses false or misleading evidence to help gain a conviction?

The U.S. Supreme Court reversed the 1956 Conviction.

When the witness said he was threatened
he was not under oath.

see mistrial minutes page 280 & 29a.

He was under oath when he said
he did not see the faces of the men.
on April 5, 1947.

That your petitioner has been informed
that the Supreme Court of the United States
ruled many years ago that perjured
testimony knowingly used is a fraud
upon the Court. And that a conviction
based thereon should be vacated as a
violation of due process.

Wherefore your petitioner prays that
an order be made and entered herein
granting a hearing: that an order issue
from this Court to the Director of
Jannemora State Hospital at Jannemora
New York, directing him to produce
your petitioner at the Supreme Court of
the County of Kings. at such time as
may be convenient, so that your petitioner
can be present at a hearing on this petition
for a writ of error coram vobis:

and your petitioner further prays that after such hearing on this petition, the conviction heretofore entered be vacated and that your petitioner be rearraigned.

Sworn to before me
This 9 day of MARCH 1970

Thas. L. Martin
Notary Public

MORRIS R. MARTIN
Notary Public in the State of New York
Residing in the County of Clinton
My Commission Expires 3/30/1975

Respectfully Submitted
Anthony Bruno
Box A. ✓

Danvers, New York.

[minutes of 3/22/47 mistrial hearing
before J. Goldstein were attached
to this petition as an exhibit.]
KPM



TELEPHONE:
677-4224

THE LEGAL AID SOCIETY
CRIMINAL APPEALS BUREAU

119 FIFTH AVENUE, NEW YORK 10003

WILLIAM E. HELLERSTEIN, ATTORNEY-IN-CHARGE

ORISON S. MARDEN
Chairman of the Board
LEON SILVERMAN
President
HAROLD H. HEALY, JR.
Treasurer
SAMUEL W. MURPHY, JR.
Secretary
EDWARD Q. CARR, JR.
Attorney-in-Chief
ROBERT KASANOFF
Attorney-of-Record

191B

February 26, 1973

Honorable Stanley H. Fuld
Chief Judge
Court of Appeals
Court of Appeals Hall
Eagle Street
Albany, New York 12207

Att: Hon. Gearon Kimball

RE: People v. Anthony Bruno
Our File No. 11593

Your Honor:

Pursuant to Criminal Procedure Law, Section 460.20,
I am submitting this letter as an application for permission
to appeal to the Court of Appeals in the above entitled
case.

On February 7, 1973, the Appellate Division, Second
Department affirmed without opinion orders rendered on
November 17, 1970 and June 21, 1971 by the Supreme Court,
Kings County, denying without a hearing defendant's petition
for a writ of error coram nobis.

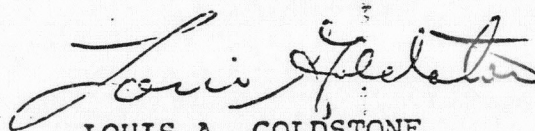
Honorable Stanley H. Fuld

-2-

February 26, 1973

I am enclosing herewith a copy of the briefs filed in the Appellate Division. No hearing will be necessary on this application.

Respectfully yours,



LOUIS A. GOLDSTONE
Associate Appellate Counsel

LAG/msc
encl.

cc: Hon. Eugene Gold
District Attorney
Kings County
400 Municipal Bldg.
Brooklyn, New York 11201

Mr. Anthony Bruno
#45485
Box B
Dannemora, New York 12929

State of New York
Court of Appeals

1910

RECEIVED
1973 APR 12 AM 10:43

—D. A.—

BEFORE: HON. DOMENICK L. GABRIELLI, Associate Judge

THE PEOPLE OF THE STATE OF NEW YORK

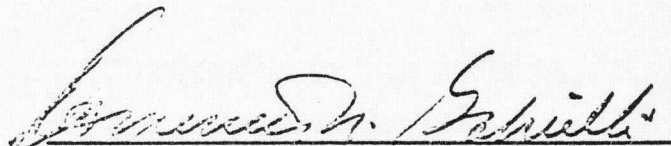
against

ANTHONY BRUNO

CERTIFICATE
DENYING
LEAVE

I, DOMENICK L. GABRIELLI, Associate Judge of the Court of Appeals of the State of New York, do hereby certify that, upon application timely made by the above-named appellant for a certificate pursuant to CPL 460.20 and upon the record and proceedings herein,* there is no question of law presented which ought to be reviewed by the Court of Appeals and permission to appeal is hereby denied.

Dated at Bath , New York
April 9 , 1973



Associate Judge

*Description of Order: App. Div. order dated Feb. 7, 1973

191E

Street & No. *Civic Center at Montague St.*
City *Brooklyn*, State *New York*.

Box B
DANNEMORA, N. Y., 12929

Date *May 1, 1972*

NYSIS 75-837X

Dear Sir:

Enclosed herewith is a copy of a writ
for a Habeas Corpus Nolis

Very truly yours,
45485 *Anthony Brown*

SUPREME COURT
KINGS COUNTY
CRIMINAL TERM

376 MAY

9

PM 10:23

DO NOT SEND CASH OR STAMPS

And is presently serving said sentence at

Supreme Court: County of Kings
The People of the State of New York
- Against -

Anthony Bruno

Defendant.

Indictment No.
842/1947

Petition for a
Writ Error Coram Nobis.

your petitioner Anthony Bruno
respectfully alleges.

1. That petitioner was the defendant
in the above entitled action.

2. That your petitioner was indicted
for the crime of robbery first degree,
Grand larceny first degree, and assault second
degree, as set forth in Indictment No. 842/1947.
① was convicted after trial of the charges set
forth in the indictment and sentenced to State
prison on September, 12, 1947, as a third felony
offender to a term of thirty years to sixty years,
and is presently serving said sentence at
Clinton Correctional Facility, Dannemora, N.Y.

ZIP CODE 12929

Writing in *People v. Sullivan*, 144 N.E. 3d 16
 Judge Burke of the Court of Appeals held that:

"The underlying purpose (of *Coram Nobis*)
 is to redress an injury done to a defendant
 which has deprived him of due process of law,
 thus enabling a defendant to void a conviction."
 Therein Judge Burke cited *People v. Sickness*, supra.
 In *People v. Silverman*, 144 N.E. 2d 10.

Judge Burke, again writing held that:

"although the fundamental precept of *coram nobis* is that it cannot be employed to raise errors appearing on the face of the record. There is an exception to this basic rule. ##
 Nevertheless, each exception to the rule must be justified by special evidence of denial of due process requiring corrective judicial process.

Hence, the scope of *coram nobis* will not be expanded unless the injury done to the defendant would deprive him of due process of law.

There is no denying by the people that I was denied due process of law. Under 1st amendment rights, 2

3. That the States evidence against your petitioner ~~or~~ consisted in the main of the testimony of Vincent Di Bari the victim, and the States only witness.

4. That your petitioner denied knowledge of this robbery.

5. This alleged robbery occurred on December 12, 1946.

6. ~~For defendant~~

Your petitioner was arrested in his home on April 4, 1947.

7. Mr. Di Bari the State witness testified he identified your petitioner in two separate police stations before the trial simply by being taken into a room where petitioner was and without the arrangement of a lineup.

See page 78, 79 of the trial minutes.

of Clinton Correctional Facility Dannemora, N.Y.
 directing him to produce your petitioner at
 the Supreme Court of the County of Kings. at such
 time as may be convenient, so that your
 petitioner can be present at a hearing on
 this petition. And your petitioner further
 prays that after such hearing on this
 petition, the conviction heretofore entered
 be vacated and that your petitioner be re-arraigned.

Sworn to before me this 1 day
 of May 1972.

Notary Public:
 Henry P. Deane

Respectfully Submitted
 73 Anthony Bruno
 Box, B.

Dannemora, New York.

Supreme Court: Kings County
 The People of the State of
 New York.

Plaintiff

- Against -

Anthony Bruno

Defendant.

TRAVERSE

IND. # 842-1947

State of New York } S.S.
 County of Clinton }

The defendant interposing his traverse
 to the affidavit in opposition to his
 motion, alleges

- ① 1. Reiterates all of the allegations set forth in the motion herein. With all the force and effect as if herein set forth.

2. Denies each and every allegation in the affidavit including the implication that defendant's claim of denial of due process, set forth in his motion is not ground for a Coram nobis proceeding and should be denied without a hearing.

In *People v. Silverman*, 144 N.E. 2d 10. Judge Burke, of the Court of Appeals, held that

"although the fundamental precept of Coram nobis is that it cannot be employed to raise errors appearing on the face of the record, there is an exception to this basic rule. *** Nevertheless, each exception to the rule must be justified by special evidence of denial of due process requiring corrective judicial process. Hence, the scope of Coram nobis will not be expanded unless the injury done to the defendant would deprive him of due process of law."

- The questions involved -

The question involved in this petition deals with the U.S. Supreme Court decision of *Stovall v. Denno*, 388 U.S. 267.

Based on the pre-trial identification of the defendant on April 4, 1947, by the victim of the alleged robbery.

It is the petitioner's contention that his conviction for robbery was obtained in violation of his Constitutional rights under the 14th Amendment.

That the victim of the alleged robbery committed on December 12, 1946, mistakenly identified him in April 4, 1947 at two separate police stations in Brooklyn at a unconstitutional line up.

In *People v. Thomas Kirby*, The United States Supreme Court on June 7, 1972, held

"A criminal suspect who has not been formally charged may be placed in a LIVEUP or Showup without a lawyer on hand looking after his rights, the Supreme Court ruled, 5-4 Wednesday, June 7, 1972. *** also held

objt

"It is only after he is indicted that the right to Counsel guaranteed by the Sixth amendment applies," ***

My argument is not that no lawyer was present at the two suprit station houses, my argument is I did not have a LIVEUP or a Showup.

The witness was told to go in a room and look at the three defendants
This is on April 4, 1967.

on April 5, 1947, the day after the arrest, Mr. Di Bari, went to felony court and signed a complaint under oath, in the complaint the witness said he did not see the faces of the men who committed the robbery.

Mr. Helfand, the former assistant District Attorney, conceded to the complaint signed under oath. Please see page 92 and 102 of trial minutes. not
r

Insofar as the retro-actively of the Stovall decision to the present case, it is submitted that the New York State Courts has taken the first step toward this goal. See:

People v. Schnebly, 33 A.D. 2d 883 (11)
a. 1969.

In *Schneble*, supra, the Court held:

"as to the retroactivity of the essential fairness doctrine expounded in *Stovall v. Denno*, 388 U.S. 293,

and the availability to petitioner of relief through *Coram nobis*,

we would apply the test laid down in *Roberts v. Russell*.

392 U.S. 292, 294,

wherein the Court held,

the ruling of *Bruton v. U.S.*,

391 U.S. 123,

with regards to the violation of a defendant's Sixth amendment rights, retroactive since."

"The error went to the basis of fair hearing and trial because the procedural apparatus never assured the defendant a fair determination of his guilt or innocence."

191P

It is therefore respectfully submitted
that the motion should be granted
a hearing

Sworn to before me this 14 day
of June 1972

Henry G. Bruger

Notary Public

Notary Public
Clinton Co. State of N. Y.
Commission Expires March 30, 1973

Respectfully Submitted
Anthony Bruno
Boy B.

nobis
r /

Danmemora, New York,

At a Criminal Term, Part 1, of the
Supreme Court of the State of
New York, held in and for the
County of Kings, at the Court-
house thereof, Civic Center,
Borough of Brooklyn, City
of New York, on the
day of JUN 16 1972

192

PRESENT:

HON. DOMINIC S. RINALDI,

Justice

-----x County Clerk's No. _____
THE PEOPLE OF THE STATE OF NEW YORK : ^{or} Indictment No. 842/1947
-against- : Motion Coram Nobis
ANTHONY BRUNO, : _____
Defendant : Submitted June 14th, 1972.

-----x Argued _____, 19
The following papers numbered _____, 19
Hearing _____, 19

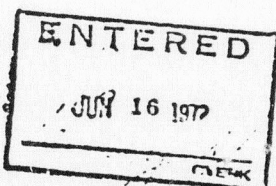
1 to 2 submitted on this motion: LEGAL AID SOCIETY
For the Motion
Eugene Gold, D.A., Kings County
Opposed

	Papers Numbered
Notice of Motion ^{by} xxx Affidavits xxxxxxxxxxxx	<u>1</u>
Order to Show Cause and Affidavits Affirmations Annexed:	_____
Writ of Habeas Corpus and Petition:	_____
Answering xxxxxxx Affidavits Affirmations:	<u>2</u>
Replying Affidavits Affirmations:	_____
Exhibits:	_____
_____ Minutes _____:	_____
_____:	_____

Upon the foregoing papers, ~~xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~ and the
opinion of the Court herein, it is

ORDERED, that the motion in the nature of a writ of error coram
nobis to vacate a judgment rendered September 12th 1947, convicting the de-
fendant, after trial, of Robbery in the First Degree, Grand Larceny in the First
Degree and Assault in the Second Degree, and imposing sentence,
be, and the same hereby is, denied without a hearing.

ENTER



[Signature]

J. S. C. DOMINIC S. RINALDI

APPELLATE DIVISION : SUPREME COURT
SECOND JUDICIAL DEPARTMENT

BEFORE: J. IRWIN SHAPIRO

, Associate Justice.

THE PEOPLE, etc.,

Plaintiff,

v.

ANTHONY BRUNO,

Defendant.

Order

Appeal & Permit #

In the above entitled cause, the above-named ANTHONY BRUNO, defendant, having moved in this court for leave to appeal thereto from an order of the Supreme Court, Kings County, dated June 16, 1972; and this court, by order dated August 7, 1972, having referred said application to me for determination;

NOW, upon the papers filed in support of said application, and the papers filed in relation thereto, and there being no opposition thereto; said ~~application~~ motion having been duly submitted; and due deliberation having been had thereon; it is:

xx ORDERED that said ~~application~~ motion for leave to appeal to this court is hereby denied.

Dated, Brooklyn, N. Y.,
August 7, 1972

J. IRWIN SHAPIRO
Associate Justice, Appellate
Division, Supreme Court, Second
Judicial Department.

/ Filed 9/11/72

94 24 V 11
RECEIVED
1972 SEP 20 AM 11:33

—D. A.—

September 18, 1972

Anthony Bruno
#45485
Box B
Dannemora, New York

Dear Mr. Bruno:

Please be advised that Judge Scileppi has dismissed your application for leave to appeal from an order dated August 7, 1972 by which Justice Shapiro denied you permission to appeal to the Appellate Division, Second Department, from an order denying coram nobis relief.

No provision is made in the Criminal Procedure Law for an appeal to the Court of Appeals from such an order and consequently, Judge Scileppi has found it necessary to conclude that he is without jurisdiction.

Very truly yours,

VJS:mek

cc: Kings County District Attorney
Clerk of Court of Appeals

Law Clerk to
Judge Scileppi

STATE OF NEW YORK—DEPARTMENT OF CORRECTIONAL SERVICES
CLINTON CORRECTIONAL FACILITY
LEGAL LETTER

40

✓ 195

Jack

NAME *Edmund Port*
ADDRESS *U. S. District Judge*
Auburn N.Y. 13021

74C 329

When replying sign your full name and address
Give inmate's full name and number.

Box B,
DANMORA, N. Y. 12029

75-83 - 7 Date *5-7-73*

*Dear Sir, enclosed you will find an amended
petition of my habeas Corpus.
Thank you for the extension to amend my
petition.*

Respectfully Submitted

Anthony Bruno #45485

LED
CLERK'S OFFICE
DISTRICT COURT E.D. N.Y.
★

FEB 21 1974

TIME AM
PM

RECEIVED
MAY 1 1973

U. S. DISTRICT JUDGE
AUBURN, NEW YORK

DO NOT SEND CASH OR STAMPS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, ex rel.
ANTHONY BRUNO,

PETITIONER

-against-

PROOF OF SERVICE
72 Civil 538

HON. J.E. LAVALLEE, SUPERINTENDENT
OF CLINTON CORRECTIONAL FACILITY,
DANNEMORA, NEW YORK 12929

RESPONDENT

STATE OF NEW YORK)
COUNTY OF CLINTON) SS:

I, ANTHONY BRUNO, being duly
sworn, deposes and says:

That I am the petitioner here-
in and in all matters pertaining thereto. Petitioner has con-
formed to prison rules of correspondence and forwarded to the
Attorney General, Louis J. Lefkowitz at Albany, N.Y. 12224,
via United States Mail Services, a true copy of the annexed
amended petition.

DATED: MAY 7, 1973

Respectfully Submitted,
Anthony Bruno
ANTHONY BRUNO
PETITIONER, PRO SE

SWORN TO BEFORE ME THIS
7 DAY OF MAY, 1973.

Henry B. Rogers
NOTARY PUBLIC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, ex rel.
ANTHONY BRUNO,

PETITIONER

-against-

AMENDED PETITION
72 Civil 538

HON. J.E. LAVALLEE, SUPERINTENDENT
OF CLINTON CORRECTIONAL FACILITY,
DANNEMORA, NEW YORK 12929

RESPONDENT

IND. NO. 842/1947

STATE OF NEW YORK)) SS:
COUNTY OF CLINTON)

I, ANTHONY BRUNO, being duly sworn, deposes and says:

That I am the petitioner herein and in all matters pertaining thereto, petitioner makes this motion to amend the habeas corpus which was dismissed on the 20th day of November, 1972, by the Honorable Justice Edmund Port. The Certificate of Probable Cause was denied December 6, 1972.

BRIEF FACTS

Subsequent to the order of denial, of a Certificate of Probable Cause entered December 6, 1972, petitioner filed for a Certificate of Probable Cause to the Second Circuit Court of Appeals, which was denied on the 26th day of February, 1973, however, the Second Circuit remanded the case back to the District Court with instructions that petitioner be permitted to amend his petition and, if facts are sufficient to state a claim for relief are alleged, to hold a hearing. (A copy of the Second Circuit Court of Appeal's order is annexed hereto and made a part hereof.)

AMENDED FACTS

On the 5th day of April, 1947, the day after which petitioner was arrested, the complainant, a Mr. DeBari went to the Felony Court and signed the complaint under oath.

The complainant's affidavit evidences a showing that the complaint said that a gun was placed in his back and he was told not to turn around. Mr. Helfand, the former Assistant District Attorney, conceded to the complaint signed by Mr. DeBari. (Please see trial minutes pages 92 and 102). The proceedings which took place after the mistrial shows Mr. DeBari testifying that he told this story before, concerning not seeing the faces of the men that robbed him. The robbery occurred on December 12, 1946, the defendants were arrested on April 4, 1947. Mr. DeBari testified that he identified the defendants in two separate police stations before the trial simply by being taken into a room where they were and without the arrangement of a line-up. (T.M. 78 & 79) On May 22, 1947, Justice Louis Goldstein after calling a mistrial told Mr. DeBari: "And for your own information, I will also tell you this, and for your peace of mind, that these three gunmen will be held in Queens County on another robbery case, where they shot a policeman and almost killed him, and they have got their identification there too..." Justice Louis Goldstein also told Mr. DeBari, "These three gunmen did tie you up, and then robbed the place, and then you come here and say you do not remember how they looked...?" Mr. DeBari, on April 5th, said the same under oath, Mr. Helfand conceded to it. (See ~~m~~istrial minutes). Petitioner's counsel, Abraham H. Brodsky, Esq. consented to a mistrial, acknowledged it by a sworn affidavit filed by Mr. Brodsky on the 20th day of December, 1965. The trial record also supports such a consent. Mr. DeBari was not killed nor harmed subsequent to trial held before Honorable Justice Samuel S. Leibowitz. There were no confessions introduced at petitioner's trial.

Remarks made by Judge Leibowitz during the sentencing of co-defendant Carlucci:

"...When the case appeared on the calendar before Judge Goldstein, the identifying witness was so terrorized by the agents of these defendants that he was in mortal fear of his life, and it required a lot of assurance from the Court and the prosecuting officials before the witness was called to take the stand and testify..." (T.M. pages 166&167)

And to think long before the witness went to the Grand Jury, Mr. DeBari went to a Felony Court and signed a complaint under oath, in which he swore that he did not see the faces of the men who robbed him.

We had no reason to threaten the witness, because our attorney told us about the complaint signed by the witness, Mr. DeBari, on April 5, 1947. The lawyer told us when he come to visit us in the jail.

POINT ONE

"WHETHER THE SHOWUP WHERE
THE ALTERNATIVE OF A LINE-
UP IS AVAILABLE, IS UN-
NECESSARILY AND IMPER-
MISSIBLY SUGGESTIVE."

Petitioner avers, that the showup at the precinct with the only witness in the case, without a line-up was so unnecessarily suggestive and conducive to irreparable mistaken identification that he was denied Due Process of Law.

The robbery allegedly occurred on December 12, 1946. The defendants were arrested on April 4, 1947. A People's witness, Mr. Vincent DeBari, testified that he identified the defendants in two separate police stations before the trial simply by being taken into a room where they were and without the arrangement of a line-up. Mr. DeBari testified as to the precinct identification on pages 77, 78, and 79 of the second trial minutes:

BY MR. HELFAND:

Q. A few days before Palm Sunday, is that right?

A. That is right.

Q. Where did you go?

A. Went to the 86th Precinct on Fifth Avenue.

Q. Fifth Avenue and where?

A. And 86th Street.

Q. Do you remember what time of day it was you went there?

A. About Three-thirty or Four O'clock.

Q. In the afternoon?

A. That is right.

Q. When you got there, did you see any of the defendants there?

A. Well, when I got there, I was told to go in a room and look at these men.

MR. BRODSKY:

I object to what he was told, if Your Honor pleases.

THE COURT:

Sustained.

BY MR. HELFAND:

Q. Don't say what you were told to do. Did you go into a room?

A. Yes, sir.

Q. Did you see anyone there whom you knew in that room, whom you had seen before?

A. There was three men in there.

Q. Who were those three men?

A. The defendants.

Q. The defendants in this case?

A. That is right.

Q. Did you identify them?

A. Yes, sir.

Q. Did you say they were the three men?

A. That is right.

Q. Were they the same three men whom you had seen in the Cirillo Brother's Coal Company on the night of December 11, 1946?

A. Yes, sir.

Q. Are they the same three men whom you have identified in this courtroom today?

A. Yes, sir.

Q. Did you see them again after that?

A. I saw them up in the 66th Precinct.

Q. Where is the 66th Precinct?

A. 49th Street, between 15th and 14th Avenue.

Q. About what time did you see them there?

A. I saw them there about 12:30 - after midnight, it was.

Q. Did you identify them there to anyone?

MR. BRODSKY:

I object to that.

A. Yes, sir.

THE COURT:

Overruled.

MR. BRODSKY:

Exception.

MR. HELFAND:

Q. To whom?

MR. BRODSKY:

I object to the form of the question.

A. Assistant District Attorney Andreozzi.

MR. HELFAND:

Q. When you identified them to Mr. Andreozzi, were they the same three men whom you had seen on the night of December 11th, at the Cirillo Brother's Coal Company?

A. Yes, sir.

MR. BRODSKY:

Object to the question, if your Honor please.

THE COURT:

Overruled.

MR. BRODSKY:

Exception.

Q. Are they the same men whom you have identified today as the defendants in this case?

A. That is right.

MR. BRODSKY:

Same objection.

THE COURT:

Same ruling.

MR. BRODSKY:

Exception.

MR. HELFAND:

Your witness.

* * *

During petitioner's trial, the prosecutor utilized unconstitutional show-up to bolster the in-court identification.

At T.M. 115 a Detective John McNally testified that Mr. DeBari went into a room in the precinct where petitioner and the two co-defendants were all alone and made an identification.

MR. BRODSKY:

Q. Now, Detective McNally, Mr. DeBari, you said, walked into one room and there were soon detectives there, is that right?

A. That is right.

Q. Then he went into another room?

A. That is right.

Q. These three men were all alone in the room?

A. Yes.

Q. Nobody else there?

A. No.

Q. Sure of that?

A. Yes.

* * *

It is petitioner's contention that Mr. DeBari's identification of petitioner which allegedly took place at two precincts, coupled with Mr. DeBari's in-court identification at trial, is spurious and incredible, when we review the fact that Mr. DeBari stated under oath in his affidavit filed in Magistrate's Court that the men that robbed the place put a gun in his back ordering him not to turn around.

Moreover, the prosecutor conceded that such statements were made by Mr. DeBari. It is interesting to note, however, the prosecutor did not explain away to the jury Mr. DeBari's statement that he (Mr. DeBari) was approached from behind by the men who allegedly committed the robbery.

It is urged that Mr. DeBari's identification in two different precincts was fabricated by the District Attorney's Office, for, without the fabrication of the identification, the prosecution would not have any evidence to present to the fact finding process. Moreover, excellent proof based on sound logic, evidences a clear showing that Mr. DeBari would not have stated in his affidavit that a gun was placed in his back and that he was told not to turn around by the robbers, if a positive identification was made at two different precincts. Such proceedings made the trial a mockery and a farce. (United States-v-Wright, 176 F. 2d 376, 379 2d Cir. 1949).

Petitioner avers, that Mr. DeBari's statement that a gun was placed in his back and that he was told^{not} to turn around, makes it impossible for this Court to determine whether in-court identification would have independent value, irrespective of the erroneous identification which took place in two different precincts. Moreover, petitioner avers that he has overcome the burden of proving that there was a suggestive showup at the precinct, and the credibility of Mr. DeBari's testimony which indicates that he did not see their faces, but yet he did see their faces, involves a great deal more than making a bald claim that these are facts for the jury to decide. A lie is a lie, no matter what the subject matter may be. Peo.-v- Savvides, NY 554 (Title 18 U.S.C. 1621).

Therefore, since the trial record (T.M. 104) clearly establishes that petitioner was identified without a line-up, the burden of proof is no longer on petitioner but rather on the People, who must establish, by clear and convincing evidence, that the in-court identification has not been tainted, by virtue of explaining of explaining to this Honorable Court, which one of the identification proceedings employed by Mr. DeBari and the People is true, the one involving Mr. DeBari's statement in his affidavit, which states that he could not identify the faces of the men who robbed him or the identification proceedings that took place in the precincts without a line-up.

Further, it is petitioner's claim that the People are bound by testimony elicited from its witnesses, which of course, derives from the Rules of Evidence in the State of New York. In the case at bar, the prosecutor went a step further and conceded, which is proper, that Mr. DeBari under oath, admitted that he (Mr. DeBari) had his back to the robbers upon the initial approach, and the concession on the People's part and the fact that Mr. DeBari's statement was made under his own volition, which exculpates petitioner from the crimes charged in the indictment, that these facts could never be deemed harmless error, when the totality of circumstances involves a close case, a crucial element involving a must identification or a prima facie case is not presented against petitioner at trial.

Moreover, the show-up affected the in-court identification according to case law, based on the rules of law, which petitioner will endeavor to show later in this amended petition.

To add credence to the irreparable harm that was done, consideration should be manifested toward petitioner's goal when we review the fact that Mr. DeBari emphatically stated under oath in Felony Court that he "did not see the faces of the men that robbed him". However, under oath at the second trial, Mr. DeBari stated under oath that "he positively identified the three men that robbed him." Your Honor, the two different identification testimonies testified to by Mr. DeBari is not a conflict of testimony, but outright perjury well within the meaning of Title 18 U.S.C. Section 1621. It was these two testimonies that caused petitioner to serve twenty-six (26) consecutive years in prison, without any other evidence being presented.

Petitioner avers that Mr. DeBari did not see the three men that robbed him and that his testimony was fabricated. This averment is based on Mr. DeBari's testifying as to the manner in which he was tied up. At T.M. 73 F. 218, Mr. DeBari testified People's direct:

Q. The chair that was shown on the photograph, does that correctly show the position of that chair on the night that you were taken to?

A. I was sitting facing the wall, yes.

Why would the defendants make Mr. DeBari sit facing the wall if a positive identification was made at the door? Again at T.M. 74 F. 221, Mr. DeBari testified that he did not see the defendants after he was tied down;

Q. Who came over?

A. I don't know. I did not see him.

Further, Mr. DeBari testified that he heard one of the defendants walking outside in the yard acting as a spotter, as part of this testimony Mr. DeBari testified that the spotter did not enter the garage. It is a highly suspicious circumstance and incredible testimony, when we review the fact that Mr. DeBari testified that he made a positive identification of the men in the doorway. This type of evidence indicates that the spotter came to the door so that Mr. DeBari could make a positive identification and then remained in the yard as a spotter or Mr. DeBari is an outright liar based on the fact that he was necessary for the cops to cause two show-ups without a line-up. If Mr. DeBari made a positive identification of the defendants at the scene of the crime, there would have been no reason for the two show-ups, maybe one and only because of the signing of the complaint. The testimony concerning the garage is as follows. T.M. 74, F. 222:

Q. What else was done?

A. That is all I remember. There was one fellow walking in and out of the yard there like a spotter there.

Q. Was walking in and out of the yard?

A. Yes.

Q. Did he walk into the garage where you were?

A. No; I did not see him, but I heard him walking on the coal dust out there.

Another outright lie was told by the People's witness (Mr. DeBari) when he testified that one of the defendants that tied his feet, covered himself up so that Mr. DeBari could not make an identification of him, at T.M. 75, F. 224:

Q. Show us just what he did?

A. He tied my hands with some more rope. Then he tied me around my legs. As he was doing it, he covered himself up so that I could not see. All I could see was his grey suit and the checkered hat he had on.

Following that, however, Mr. DeBari was asked by the prosecutor at T.M. 75, F. 224:

Q. Do you know which one of the defendants it was who tied your feet up?

A. Yes, sir.

Q. Which one?

A. The one on the end.

MR. HELFAND:

which defendant is that? Carlucci?

THE COURT:

Stand up, please.

(Carlucci stands)

Mr. DeBari's own testimony stated that the man that tied up his feet covered himself up, but yet Mr. DeBari made a positive in-court identification of the defendant that tied up Mr. DeBari's feet. Did Mr. DeBari identify a grey suit, checkered or pinstripe cap, or a grey cap? Or did Mr. DeBari identify a man that was sitting on the end because he saw three men sitting in a row and knew that Carlucci was on trial and any pick would suffice? When the State sustained the identification process employed by the People's witness, Mr. DeBari, a mockery of jurisprudence unfolded and petitioner, as a result of perjured and tainted identification proceedings, was deprived of due process of law.

If it please the Court, there are seven (7) interesting facets which the trial record clearly sustains, that the People's witness, Mr. DeBari, meticulously spread over the face of the records incredible testimony, the seven facets are:

- 1- Mr. DeBari saw three men standing in a narrow door, at
- 2- 12 o'clock at night with the light 20 feet behind his back, for only
- 3- three seconds.
- 4- The affidavit filed and sworn to by Mr. DeBari, which clearly shows that he could not identify the faces of the men that robbed him, since the gun was placed in Mr. DeBari's back and he was told not to turn around.
- 5- If Mr. DeBari's identification was a positive and truthful identification, why was petitioner picked-up four months after the alleged crime, in view of petitioner living in the same neighborhood and in view of petitioner's prior record involving photographs that Mr. DeBari could have re-

viewed, provided that the photos are shown pursuant to proper procedure?

- 6- It was never established how or what prompted the cops to arrest petitioner, the record is void of such facts. The record establishes that the second trial Court wanted information from the defendants pertaining to gang land slayings.
- 7- That Mr. DeBari's testimony was factually and legally insufficient to warrant a conviction.

Petitioner respectfully asks this Court to take a good look at "People's Exhibit 4",* which is the door that Mr. DeBari allegedly identified three (3) men, in a span of three (3) seconds. The door is just about wide enough for one person to pass through, but yet Mr. DeBari testified that he saw three faces with the light in the garage twenty feet behind him. Moreover, the photographer did not do the picture justice for the camera with its light bulb created more light than the light that was originally present at 12 o'clock at night. Plus, the pictures were taken during the day, which is in conflict with how the place looked at night. It is interesting to note, however, that the light bulb that was behind Mr. DeBari was inside a frosted globe, which therefore, dimmed the lighting to the extent that a 150 watt bulb is not as bright as it would normally be without the frosted globe surrounding the bulb, not to exclude however, that Mr. DeBari testified that he identified three men in the approximate period of three seconds.

Moreover, on the 5th day of April, 1947, Mr. DeBari in his complaint signed by him states as follows, T.M. 92:

"The defendant Loffredo took either a revolver or a pistol from his pocket and pressed it against deponent's back and told deponent not to turn around, and put deponent on a chair facing the wall."

* NOTE: Exhibit 4 is part of the original transcript of the second trial.

MR. BRODSKY:

Will you concede, Mr. Halfand, that that was the statement?

THE COURT:

Do you concede that that is in the complaint, is that it?

MR. HALFAND:

Yes.

THE COURT:

All right; let the record so state.

MR. BRODSKY:

In the Felony Court, made on April 5th, 1947.

Petitioner respectfully asks this Court, which controls, the affidavit which clearly indicates that Mr. DeBari could not have seen the faces of the alleged culprits or under testimony, given under oath, that he positively identified petitioner as one of the men who robbed him? Could it be said that irrespective of the choice, perjury is clear cut?

It is interesting to note, however, how Mr. DeBari tried to circumvent the affidavit through cross-examination of defence counsel, but later on, openly admitted that he signed the affidavit and admitted to the contents of the affidavit. When defence counsel was using the affidavit for credibility purposes, Mr. DeBari opposed it by interruption, at T.M. 92:

Q. The defendant, Loffredo, took either a revolver or a pistol from his pocket and pressed it against deponents back?

A. How could he put it in my back if I was facing him?

Q. And told deponent not to look around, and put deponent on a chair facing the wall?

A. That is "maybe" after he turned me around, he had the gun in my back.

(Emphasis added by petitioner)

T.M. 95 imports Mr. DeBari
owning up to the affidavit:

Q. Did you tell the Clerk that the defendant, Loffredo took either a revolver or a pistol from his pocket and pressed it against deponent's back, and told deponent not to

look around, and put deponent on a chair facing the wall?

A. That is right.

Q. Did that happen?

A. Yes.

It is further contended, that the four months that it took to arrest petitioner, who lived in the same neighborhood as Mr. DeBari, cast a terrible reflection on the police department's method for obtaining a lead on a suspect, for, if Mr. DeBari's identification was a positive and truthful identification, petitioner should have been picked up sooner, in view of petitioner's prior convictions based on mug shots. Mr. DeBari could have reviewed the said mug shots, provided that the photos are shown pursuant to proper procedure. Moreover, the trial record is void of how or what prompted the arresting officers to arrest petitioner. The trial record is clear that petitioner got 30 to 60 years for not having information that Justice Samuel S. Lebowitz thought petitioner had. (T.M. 163)

Petitioner respectfully avers that Mr. DeBari's testimony was factually and legally insufficient to warrant a conviction.

During the first trial, which ended in a mis-trial, after the mis-trial Mr. DeBari appeared before the Court. (Respondent's Brief 29-A)*

Petitioner contends, that there were statements made by Mr. DeBari which bears on intimidating Mr. DeBari to make a false identification of petitioner. These statements refer to proceedings prior to the first trial and the mis-trial and have absolutely no conjunction with the alleged threats made on the life of Mr. DeBari. For example, at R.B. 31*A

MR.DEBARI:

"I told you before, so that I won't put you in any trouble or anybody else here. I don't want you to continue with a case where I know I will lie. I told you before, I do not want to lie in a case."

* NOTE: Petitioner's quotes are from the Attorney General's Brief, filed October 4, 1967, and "R.B." will be used to refer to the Attorney General's Brief. Thank-you.

This statement was made by Mr. DeBari the same day that the mis-trial was called. Who did Mr. DeBari tell that he did not want to lie in a case? Petitioner avers, that the Trial Court was not told nor was defence counsel, the process of elimination leaves only one person, namely, Miles F. McDonald, the District Attorney of Kings County, who was responsible for any and all constitutional deprivations administered by his assistants. The lie, obviously, is based on Mr. DeBari making an identification of men, whom he could not have normally identified. It is interesting to note, however, that Mr. DeBari testified at the second trial and the alleged threats were not carried out.

The aforementioned statement when compared with the affidavit signed and filed in the Felony Court gives Mr. DeBari every right in the whole wide world to state that he does not want to lie in a case. When we line the two statements one behind the other, a crystal clear picture emanates from the truth

THE STATEMENT BY MR. DEBARI AT THE FIRST TRIAL: "I told before

so that I won't put you in any trouble or anyone else here. I don't want you to continue with a case where I know I will lie. I told you before, I do not want to lie in a case."

THE AFFIDAVIT THAT WAS INTRODUCED AT THE SECOND TRIAL:

"The defendant, Loffredo, took either a revolver or a pistol from his pocket and pressed it against deponent's back and told deponent not to turn around, and put deponent on a chair facing the wall."

It is averred, that the Court and the People badgered, intimidated and bullied Mr. DeBari to the extent that they made him identify petitioner at the second trial, for example, the Trial Court at R.B. 31-A bellowed:

"If you want to take thier place in this courtroom, and be a defendant instead of these three notorious gunmen and robbers, that have records as long as your arm, I will give you that oppertunity. I will hold you in \$50,000.00 bail..."

At R.B. 32-A, the assistant district attorney chipped in and threatened Mr. DeBari, when he stated:

MR. HELFAND:

You are the one that will be put in jail.

MR. DEBARI:

Put me in jail, I know what I'm up against.

Moreover, petitioner avers, that he was denied equal protection of the law and procedural due process, pursuant to the United States Constitution, BERGER-v-U.S., 295 U.S. 78,88, and PEOPLE-v-TROWBRIDGE, 305 NY 471, when the prosecutor without the slightest justification, bolstered the witnesses' identification, by virtue of soliciting testimony from the State's star witness as to identification proceedings that took place in the 66th Precinct.

Petitioner contends that it was plain error to ask the witness (Mr. DeBari) if he identified the three defendants to anyone in the precinct, over objections by defence counsel, and it was plain error for the Trial Court to have overruled such objections.

The question was answered and the witness named Assistant District Attorney Andreozzi as the person whom Mr. DeBari allegedly identified the three defendants to. The highly prejudicial direct examination by the People is as follows, T.M. 79:

Q. Did you identify them to anyone?

MR. BRODSKY:

I object to that.

A. Yes, sir.

Q. To whom?

MR. BRODSKY:

I object to the form of the question.

A. Assistant District Attorney Andreozzi.

Q. When you identified them to Mr. Andreozzi, were they the same three men whom you had seen on the night of December 11th, at the Cirillo Brother's Coal Company?

A. Yes, sir.

MR. BRODSKY:

Object to the form of the question, if Your Honor please.

THE COURT:

Overruled.

MR. BRODSKY:

Exception.

Q. Are they the same men whom you have identified today as the defendants in this case?

A. That is right.

MR. BRODSKY:

Same objection.

THE COURT:

Same ruling.

MR. BRODSKY:

Exception.

The law was settled in the State of New York, when petitioner went to trial and the bolstering identification proceedings employed by the prosecutor prejudiced the "fact finding process" and petitioner did not have a fair trial.

Moreover, the Assistant District Attorney, Mr. Andreozzi was not called by the People, thereby depriving petitioner of his 6th Amendment Right to confront witnesses. (POINTER-v-TEXAS, 380 U.S. 400) Nor was defence counsel put on notice that Mr. Andreozzi's name would be used to bolster Mr. DeBari's identification, which of course, is in violation of the rules promulgated in PEOPLE-v-TROWBRIDGE, 305 NY 471. (See Section 393b of the former Code of Criminal Procedure). Further, petitioner would have placed himself in a precarious position had he called Mr. Andreozzi, for Mr. Andreozzi is a People's witness and a member of the District Attorney's staff, plus, petitioner could not attack the credibility of his own witness and the dilemma is obvious.

Therefore, the prosecution's actions are no less harmful than violations that place in PEOPLE-v-FIELDING, 158 NY 542, and, BERGER-v-UNITED STATES, 295 U.S. 78,88, and the bolstering identification proceedings as instituted by the prosecutor, should in itself warrant a reversal of the Judgement of Conviction.

Petitioner respectfully contends, that there are rules of law and one of the rules precludes a judge from showing an interest in the office of the People, to the extent that the Trial Court's function is no longer an independent function but represents a mob scene. Petitioner further contends, that Judge Goldstein was an advocate of the State. (See colloquy between Justice Stewart and States Attorney Mentz during the Supreme Court Hearing in GIDEON-v-WAINWRIGHT, 372 U.S. 335, "A judge's job is to be a judge (not) an advocate for one of the litigants." "In our adversary system, it is enough for a judge to judge." U.S.-v-YOUNGBLOOD, F.2d (2nd Cir. 1967). Compare, YOUNG-v-U.S., 346 F. 2d 793 (D.C. Cir., 1965)

It is averred, the impact of the Trial Court and the District Attorney's actions imposed upon Mr. DeBari were carried over to the second trial, thereby, depriving petitioner a fair trial. It should be noted, however, that the threats imposed on Mr. DeBari were for no other purpose than to make Mr. DeBari identify the three defendants in the second trial, and the right to a fair trial pursuant to the 6th and 14th Amendments to the United States Constitution were critically violated.

During the first and second trials, it was not brought to the surface how or what prompted the arresting officers to go directly to petitioner's house and make the arrest. The trial records are completely void of such facts. However, the trial record of the second trial clearly shows that the District Attorney and the Trial Court went out of their way to try and force petitioner and co-defendants to divulge information that petitioner did not have, concerning gangland slayings. The question is, was petitioner picked-up for the purpose of supplying corroborative evidence to help convict gang lords or because of an alleged robbery, whose complainant gave incredible testimony which resulted in petitioner serving 26 consecutive years in State Prison?

Petition avers, that his equal protection rights were critically violated by virtue of being identified only with his two co-defendants and without the use of a line-up, at the time when the police had the opportunity to formulate a constitutional line-up. The gravamen is evidenced by the fact that the prosecution used the unconstitutional show-ups from two precincts to establish a positive identification and affected the "fact finding process". Petitioner's deprivations of Federal and State Rights were no less harmful than the Rights accorded to PEOPLE-v-OAKLEY, 28 NY 2d 311, NYS 2d 596, when the District Attorney conceded that the exhibition of defendant alone to the victim was inadmissibly suggestive, and because of that view, did not offer evidence of the identification at trial.

A pre-trial identification procedure, even though not violative of defendant's Right to Counsel, may be so unfair as to amount to denial of Due Process of Law. STOVALL-v-DENNO, 388 U.S. 293, 87 S. Ct. 1967, 18 L. Ed. 2d 199 (1967); PEOPLE-v-BROWN, 282 NYS 2d 497. In the Stovall case (388 U.S., at p. 302, 87 S. Ct., at p. 1972), the Supreme Court pointed out that "the practice of showing suspects singly to persons for the purpose of identification

and not as part of a line-up, has been widely condemned" and in BROWN, a majority of our Court very recently declared that (20 NYS 2d, at pp. 243-244, 282 NYS 2d, at p. 501, 229 N.E. 2d, at p. 194):

"Absent 'imperative' circumstances necessitating resort to such a procedure, the practice of having a witness secretly view for identification purposes, only the very suspect whom the police have taken into custody for the crimes can be 'so unnecessarily suggestive and conducive to irreparable mistaken identification' as to amount to denial of due process of law."

In KIRBY-v-ILLINOIS, 40 US L.W. 4607, 4614, the portion of the opinion, which is somewhat obscure, is in Part II. The KIRBY plurality held:

"What has been said is not to suggest that there may not be occasions during the course of criminal investigation when the police do abuse identification procedures. Such abuses are not beyond the reach of the constitution. As the Court pointed out in Wade itself, it is always necessary to 'scrutinize any pretrial confrontation.....' 388 U.S., at 227. The Due Process Clause of the Fifth and Fourteenth Amendments forbids a line-up that is unnecessarily suggestive and conducive to irreparable mistaken identification. STOVALL-v-DENNO, 388 US 293; FOSTER-v-CALIFORNIA, 394 US 440. When a person has not been formally charged with a criminal offence STOVALL strikes the appropriate balance between the Right of a suspect to be protected from from prejudicial procedures and

prejudicial procedures and the interest of society in the prompt and purposeful investigation of an unsolved crime." 40 U.S. L.W. at 4610.

Moreover, petitioner claims that based on the totality of circumstances, consideration of his claim should be granted, "independent of any right to counsel claim." STOVALL *supra* at 388 U.S. 1973. PALMER-v-PEYTON, 359 F. 2d 199 (C.A. 4th Cir. 1966).

Petitioner avers that the "independent source doctrine" when compared with the Felony Court Affidavit signed by Mr. DeBari, not only destroys the independent source doctrine but caused the facts to be in dispute, thus, causing the in-court identification by complaining witness to be irreparably tainted as a matter of law, by the two highly suggestive and prejudicial "show-ups" to which petitioner was subjected to prior to trial. (See e.g., UNITED STATES-v-STOVALL 388 U.S. 218, 240, 87 S.Ct. 1926, 18 L. Ed. 2d 1149; PEOPLE-v-HANLEY, 27 NY 2d 648, 313 NYS 2d 868, 261 N.E. 2d 905; PEOPLE-v-HILL, 22 NY 2d 686, 291 NYS 2d 802, 338 N.E. 2d 913; PEOPLE-v-MOBLEY, 29 AD 2d 775, 287 NYS 2d 272)

Petitioner avers, that few judges have had the soul-shaking experience of later learning that an innocent defendant was convicted before them and that there existed no resemblance whatsoever between the wrongly convicted defendant and the true perpetrator. This kind of experience is not common because justice does not inevitably triumph. Cases of "wrong man" convictions have been extensively catalogued in WADE and elsewhere. SEE: 388 U.S. at 288, N.6. Many judges have concluded that best most eye-witnesses can retain the memory of the obvious two eyes, one nose and one mouth. There is always cause for concern when guilt or innocence turns solely on identification testimony and nothing else connects the defendant with the crime.

Nevertheless, courts have refused to outlaw pure eye-witness identification convictions, reasoning that there are cases where this type of evidence is essential. But it is generally understood that evidence as to identity (without more to connect the defendant with the crime) is the least to be relied upon of all classes of evidence, no matter how certain or convincing the witness.

In any event, petitioner avers that the two show-ups tainted the in-court identification during the trial proper, pursuant to the "poisonous tree doctrine" enunciated in WONG SUN-v-UNITED STATES, 371 U.S. 471, 488, 83 S. Ct. 407, 417, 9 L.Ed. 2d 441:

"Whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint."

* * * * *

Petitioner was further denied the Due Process and Equal Protection Clauses Of the 5th, 6th and 14th Amendment Rights to the United States Constitution, by virtue of ineffective assistance of counsel, which is tantamount to no counsel at all. GIDEON-v-WAINWRIGHT, 372 U.S. 335; POWELL-v-ALABAMA, 287 U.S. 45.

During the first trial, the Trial Court asked petitioner's counsel if he had any objection to a mistrial and defence counsel responded in the negative. AT R.B. 29-A the following took place:

THE COURT:

I think in view of the circumstances here, we ought to agree to a mistrial here, and an adjournment in this case. Do you have any objection to that, Mr. Brodsky?

MR. BRODSKY:

No, sir.

THE COURT:

MR. DISTRICT ATTORNEY?

MR. NIAS:

No objection.

THE COURT:

By agreement with counsel, I will set this case down for June 2nd. There will be no comments made at all.

MR. BRODSKY:

Will Your Honor set it down for next Monday?

It is avered that petitioner was deprived of the right to reap the benefits of "double jeopardy" in violation of the 5th Amendment and Section 9 of the Code of Criminal Procedure, by virtue of petitioner's counsel agreeing not to offer an objection to a mistrial. The law was settled under Section 9 of the Code of Criminal Procedure, that had the defence counsel objected to a mistrial and the Trial Court disregarded counsel's objection and discharged the jury without defence counsel's expressed consent, former jeopardy would have entered the picture. Moreover, if the defence counsel had objected and refused to consent to discharging the jury and the Trial Court honored defence counsel's refusal to consent and continued the trial, a motion to the Trial Court for a directed verdict of acquittal prior to the Court's charge to the jury would place petitioner in position to be discharged from custody.

To eliminate any paradoxical contention by the Attorney General's Office, petitioner avers the ineffective counsel issue is borne out of the identification issue, based on the refusal of the People's witness (Mr. DeBari) to identify petitioner because of an alleged threat, which prompted the Trial Court on its own volition to call a mistrial which was favorable to the People's case.

Pursuant to TOWNSEND-v-SAIN, 372 U.S. 293, the facts are in dispute and a hearing was not granted in the State of New York and a hearing in the Federal Court should be granted in the interest of justice. PEOPLE-v-ALSTON, 27 NY 2d 822, 216 NYS 2d 433; PEOPLE-v-HANLEY, 27 NY 2d 648, 313 NYS 2d 868.

Will this Court please have the Attorney General produce for the record the following:

- 1). A copy of Form D.D.5, under art. 18B Sect. 722C of the County Law, petitioner is intitled to any minutes, police records or any other papers pertaining to this case.
- 2) The First Indictment, dated 12/19/46. (See trial minutes, p.41)
- 3) The witnesses complaint of April 5, 1947.

The reason for the papers mentioned above is to show the credability of the State witness, also to show how often the witness shifted position.

CONCLUSION

That a hearing be granted
or in the alternative, the
Judgement of Conviction be

x
reversed and petitioner
discharged from custody
on the basis of the record.

The Attorney General has
been served with a copy of the herein amended petition.

DATED: MAY 1, 1973.

RESPECTFULLY SUBMITTED,

Anthony Bruno
ANTHONY BRUNO
PETITIONER, PRO SE

SWORN TO BEFORE ME THIS
7 DAY OF MAY, 1973.

Alvin K. Biquin
NOTARY PUBLIC

NOTARY PUBLIC
STATE OF NEW YORK
COUNTY OF ALBANY
75

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

217A

UNITED STATES OF AMERICA ex rel.
ANTHONY BRUNO

Petitioner,
-against-

J.E. LaVALLEE, Superintendent of
Clinton Correctional Facility,

Respondent.

AFFIDAVIT IN OPPOSITION
TO ATTORNEY GENERAL'S
AFFIDAVIT

74 Civ. 329

IN CLERK'S OFFICE
DISTRICT COURT E.D. NY

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

APR 1 - 1975

TIME 11:00 AM

I Anthony Bruno, duly sworn, deposes and says:

That I am the petitioner herein and all matters
pertaining thereto.

The statements contained in this affidavit are
based on information obtained from the files of the District
Attorney of Kings County.

Petitioner avers, that the showup at the precinct
with the only witness in the case, without a line up was so
unnecessarily suggestive and conducive to irreparable mis-
taken identification that he was denied Due Process of Law.

Mr. Polari testified as to the precinct identifi-
cation on Pages 77, 78, and 79 of the second trial minutes
By Mr. Helfand:

- Q. A few days before Palm Sunday, is that right?
A. That is right.
Q. Where did you go?
A. Went to 86 Precinct on Fifth Avenue.
Q. Fifth Avenue and where?
A. And 86 Street.

BEST COPY AVAILABLE

Q. Do you remember what time of day it was you went there?

A. About Three-Thirty or Four O'Clock.

Q. In the afternoon?

A. That is right.

Q. When you got there, did you see any of the defendants there?

A. Well, when I got there, I was told to go in a room and look at these men.

Mr. Brodsky:

I object to what he was told if your Honor please.

The Court:

Sustained.

By Mr. Helfand:

Q. Don't say what you were told to do. Did you go into a room.

A. Yes Sir.

Q. Did you see anyone there whom you knew in that room, whom you had seen before?

A. There was three men in there.

Q. Who were those three men?

A. The defendants.

Q. The defendants in this case?

A. That is right.

Q. Did you identify them?

A. Yes Sir.

Q. Did you say they were the three men?

A. That is right.

Q. Were they the same three men whom you had seen in the Cirillo Brother's Coal Company on the night of December 11, 1946?

A. Yes Sir.

Q. Are they the same three men whom you have identified in this courtroom today?

A. Yes Sir.

During petitioner's trial, the prosecutor utilized unconstitutional show-up to bolster the in court identification.

At page 115 of T.M. Detective John McNally testified that Mr. DeBari went into a room in the precinct where petitioner and two co-defendants were all alone and made an identification.

Mr. Brodsky:

Q. Now, Detective McNally, Mr. DeBari you said walked into one room and there were some detectives there, is that right?

A. That is right.

Q. Then he went into another room?

A. That is right.

Q. These three men were all alone in the room?

A. Yes.

Q. Nobody else there?

A. No.

Q. Sure of that?

A. Yes.

Judge Goldstein

Threatened the witness used coercion by calling employees, to persuade the witness to falsely identify petitioner and co-defendants after the witness on April 5, 1947, swore in court that he did not see the faces of the perpetrator.

Judge Goldstein also told the witness:

"And for your own information, I will also tell you this, and for your peace of mind, that these three gunmen will be held in Queens County on another robbery case, where they shot a policeman and almost killed him and they have got their identification there too."

The fact remains that, had the district attorney or the court possessed such evidence then why, was I never charged indicted and tried for the above charges.

Please see mistrail minutes

**** "These three gunmen did tie you up and then robbed the place, and then you come here and say you do not remember how they looked liked."*****

I say:

On April 5, 1947, the District Attorney's witness Mr. Dibari went to felony court and signed a complaint under oath, and said the same as above long before the alleged threat, and long before Mr. Dibari went to the Grand Jury.

Judge Goldstein Told the State's only witness:

1. Of any prior criminal record.
2. That he shot a policeman and almost killed him, and that he were identified on that case.
(I say that Judge Goldstein is lying to the State Witness.)
3. Got the Cirillo Brothers to talk to the witness and say it was us.
4. Suppressed the first indictment dated 12/19/46.

See Page 41 T.M.

The following excerpts from the trial record indicates intimidation by the Court and District Attorney Office.

By Judge Leibowitz:

"It required a lot of assurance from the Court and the prosecuting officials before the witness was called to take the stand and testify."***

See Page 166 & 167 of T.M.

I say:

Nowhere in any of the records appertaining to this matter is there anything that tends to show that said witness was not subjected to pressures calculated to induce him to change his initial testimony (see Complaint of April 5, 1947) so that it would harmonize with allegations of prosecution.

See U.S. ex rel Elkann v. Gilligan 205 F Supp. 224 (S.D.N.Y. 1966).

"A judge's prime responsibility is to maintain the integrity of the judicial system; to see that due process of law equal protection of the law and basic safeguards of a fair trial are upheld. The judge stands as the symbol of even handed justice." ***

See Also:

"N.D. 1938. The function of the trial court in a criminal case is to preserve scrupulously the legal rights of both the people and the accused, and not to insure victory or defeat for either contestant. People V. Norman, 7 N.Y.S. 2d 560, 255 App. Div. 314.

CONCLUSION

That a hearing be granted or in the alternative, the judgment of conviction be reversed on the basis of the record.

The Attorney General has been served with a copy of the petition.

Respectfully Submitted

Anthony Bruno
Anthony Bruno PRO SE

Sworn to before me this
27 day of MARCH 1977.

Charles H. Giordano

CHARLES H. GIORDANO
Notary Public, State of New York
Exp. 24-4-78
Qualified in Kings County
Notary Public, State of New York, 1977

"I certify that
This is a true copy

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

Attest 2-28-74

UNITED STATES ex rel. ANTHONY BRUNO,

Petitioner,

J. R. SULLIVAN
Clerk, U.S. District Court
IN CLERK'S OFFICE
DISTRICT COURT E.D. N.Y. BY: S. D. Cress
Deputy

-vs-

J. E. LaVALLEE, as Superintendent of
Clinton Correctional Facility,

FEB 26 1974

72-CV-538

Respondent.

TIME A.M.
P.M.

74C 329

EDMUND PORT, Judge

Memorandum-Decision and Order

By memorandum-decision and order dated November 20, 1972, I originally denied the above captioned petition for federal habeas corpus; on December 6, 1972 I issued an order denying an application for a certificate of probable cause. The Second Circuit Court of Appeals, by order dated February 26, 1973, likewise denied an application for a certificate of probable cause but remanded the case to this court with instructions to permit the petitioner to amend the petition and directed that if facts sufficient to state a claim for relief are alleged, to hold a hearing. The petitioner has submitted his amended papers to this court.

The petitioner¹ alleges that he was convicted in the former Kings County Court, after a jury trial, of Robbery 1st degree, Grand Larceny 1st degree, and Assault 2nd degree, and

¹ Petitioner was confined in the Clinton Correctional Facility when the petition was originally submitted; he has subsequently advised this court, by letter dated July 16, 1973, that he had been transferred to the Fishkill Correctional Facility, Beacon, New York, where he is presently confined.

2/20/74

sentenced to a term of 30 to 60 years on September 12, 1947.² On direct appeal the conviction was unanimously affirmed by the Appellate Division without opinion. People v. Bruno, 273 A.D. 977 (2d Dept. 1948). Leave to appeal to the Court of Appeals is alleged to have been denied in 1948. Petitioner, over the years, has brought many collateral proceedings and, in particular, alleges that he exhausted the question raised by his instant petition for federal habeas corpus by means of a petition for a writ of coram nobis in the Kings County Supreme Court, the same being denied without a hearing on June 16, 1972. The Appellate Division, Second Department denied leave to appeal on August 7, 1972, and the Court of Appeals is alleged to have denied leave to appeal on September 18, 1972.

This court instructed the United States Magistrate at Auburn, New York to obtain all pertinent copies of petitioner's previous state court proceedings. Since May of 1973, the Magistrate has been actively engaged in attempting to secure these records; particularly, a copy of the transcript of petitioner's 1947 conviction. It was hoped that the state court records would clarify the need for an evidentiary hearing in this matter. To date, despite the best efforts of the Magistrate, a copy of the petitioner's 1947 trial record has not been obtained. It should be noted that the petitioner has been most patient in this matter and has attempted, himself, to locate the pertinent records.

I have examined the amended petition before me in

² The petitioner was resentenced, as a second felony offender, to the same term as originally imposed, on June 2, 1961.

this matter and am of the opinion that it states facts true, are sufficient to state a claim for relief;³ and pursuant to the remand from the Second Circuit, a hearing will be required in the resolution of this petition.

As previously stated, the petitioner is presently confined at Beacon, New York, which is not in this District,⁴ and was convicted and sentenced in Kings County, which is part of the Eastern District of New York. It is obvious that the issue raised on the attack of this 26 year old conviction will require the testimony of certain witnesses⁵ all of whom would be beyond the reach of this court's subpoena power were I to hold the hearing on the remand. This situation calls for a transfer pursuant to the provisions of 28 U.S.C. §2241(d).

Accordingly, for the reasons herein, it is

ORDERED, that pursuant to the provisions of 28 U.S.C. §2241(d), and in the furtherance of justice, the petition herein is hereby transferred to the District Court for the Eastern District of New York for hearing and determination in accordance with the remand of the Court of Appeals, and it is further

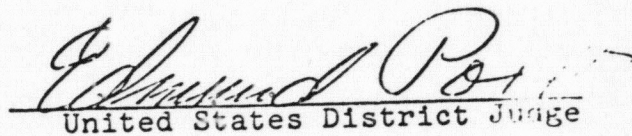
ORDERED, that the Clerk of this court forward the

³ The petition presents facts alleging that the petitioner was subjected to two separate unnecessarily suggestive pretrial identifications by the victim of the crime, leading to the possibility of irreparable misidentification so as to deny him due process of law.

⁴ The Fishkill Correctional Facility is located in the Southern District of New York.

⁵ The victim, various police officials, and possibly the petitioner's then attorney, the prosecutor, and other court officials.

file in this case to the Clerk of the United States District Court for the Eastern District of New York.


United States District Judge

Dated: February 20, 1974
Auburn, New York.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA
ex rel ANTHONY BRUNO,

Petitioner,

74 C 329

MEMORANDUM AND
ORDER

-against-

April 15, 1975

HON. J. E. LAVALLE, Superintendent of
Clinton Correctional Facility,
Dannemora, New York 12929,

Respondent.

-----x
PLATT, J.

Pursuant to remand by the United States Court of Appeals and transfer from the Northern District of New York, this petition for a writ of habeas corpus, which seeks to invalidate a State criminal conviction, was filed in this Court on February 26, 1974.

Petitioner alleges that he was convicted on September 12, 1947, after a jury trial, of robbery in the first degree, grand larceny in the first degree, and assault in the second degree, by the County Court of Kings County. Petitioner was sentenced to a term of 30 to 60 years as a third felony offender. On April 19, 1948 the Appellate Division, Second Department, unanimously affirmed the conviction without opinion. People v. Bruno, 273 App. Div. 977.

2.

Leave to appeal to the Court of Appeals is alleged to have been denied in 1948. Subsequently, on June 2, 1961, petitioner was resentenced by Judge Leibowitz as a second felony offender, but the same sentence was imposed.

The crime for which petitioner was convicted was the nighttime robbery of a coal company in Brooklyn, New York, on December 12, 1946.

Over the years petitioner has brought many collateral proceedings and, in particular, has made numerous applications for coram nobis relief, raising the issue of identification, the subject of the instant petition. In an application verified on July 31, 1962, petitioner contended that witness Vincent DiBari, a night watchman at the Cirillo Brothers Coal Company and the victim of the crime, committed perjury in identifying petitioner as one of the assailants, and that DiBari was incompetent as a witness due to his poor eyesight. This application was denied by Judge Leibowitz on September 11, 1962.

In May of 1963, petitioner brought an application contending that his defense counsel was incompetent because, inter alia, he failed to explore DiBari's poor eyesight. Judge Leibowitz denied this application on June 18, 1963. A similar application was again denied by the same judge on September 16, 1963, and the Appellate Division, Second Department affirmed without opinion on March 2, 1964. Judge

3.

Burke of the New York Court of Appeals denied leave to appeal on June 1, 1964.

In an application filed by petitioner in March, 1970, petitioner again claimed that DiBari committed perjury in that his testimony at trial conflicted with the complaint filed in the Magistrates' Court, and his refusal to testify at an earlier trial forcing a mistrial. This application was denied on November 17, 1970. In January, 1971, petitioner filed an application asserting that DiBari was the sole identification witness and that DiBari was "blind," having a visual capacity of only 45-55. This application was denied on June 15, 1971, on the ground that it presented the same issues that had been earlier resolved against petitioner by Justice Damian's decision of November 17, 1970.

Petitioner alleges that he exhausted the question raised by his instant petition for a writ of habeas corpus by means of a petition for a writ of coram nobis in the Kings County Supreme Court, the same being denied without a hearing on June 16, 1972. The Appellate Division, Second Department, denied leave to appeal on August 7, 1972, and the Court of Appeals is alleged to have denied leave to appeal on September 18, 1972.

This petition alleges that the petitioner was subjected to two separate unnecessarily suggestive pretrial identifications by the victim of the crime, Vincent DiBasi, leading to the

4.

possibility of irreparable misidentification so as to deny him due process of law under the Fourteenth Amendment to the United States Constitution.

Upon careful reading of the trial transcript, the Court finds the following points of salient testimony at petitioner's trial:

Vincent DiBari, a night watchman at the Cirillo Brothers Coal Company, testified that he went on duty at 6 P.M. on the evening of December 11, 1946. After completing some of his preliminary duties he returned to the shipping room adjacent to the garage.

Shortly after midnight DiBari heard footsteps in the coal yard just outside of the shipping room. He then removed the latch from the shipping room door, and as he opened the door, he was confronted by three men wearing no disguises. All three men were standing on the top landing of the entrance to the shipping room, two feet in front of DiBari, with one man in front, two in back.

At the time, the shipping room was illuminated by one clear light of 150 watts suspended from the ceiling approximately twenty feet behind DiBari as he faced the three men. There were also lights near the front of the garage.

DiBari stated that he was not looking at the assailants clothing but their faces. One of the men, later identified as Louis Loffredo, took a gun out of his pocket and held it at DiBari's stomach. Loffredo then ordered

5.

DiBari to sit down and face the wall. The assailants tied DiBari's hands behind his back, and he was kept in a sitting position facing the wall for ten or fifteen minutes. While in this position he heard moving noises in the room directly above where the safe was located.

DiBari was then ordered to go to the garage with his hands still tied, and was directed to sit facing the wall while one of the assailants stood behind him. Another assailant, later identified as Dominick Carlucci, then tied his legs. After the assailants left, and upon hearing an automobile leave, DiBari untied himself and called the police.

On cross-examination, DiBari estimated the time that elapsed from the moment of his first encounter with the three assailants in the doorway until they ordered him to turn around and face the wall as "about one minute." However, when asked to demonstrate the passing of a minute by clapping his hands, the time that elapsed was "about three seconds."

Furthermore, when DiBari made his initial complaint in the County Court concerning the robbery, the complaint stated: "The defendant Loffredo took either a revolver or a pistol from his pocket and pressed it against deponent's back and told deponent not to look around, and put deponent in a chair facing the wall." The discrepancy between the above-described statement, and the DiBari testimony elicited upon direct examination, was fully explored on cross. Upon being

6.

confronted by defense counsel with this statement, DiBari replied, "How could he have put it in my back if I was facing him? . . . That is maybe after he turned me around he had the gun in my back. . . If he put it in my back how could I see it? I would not be able to see the gun."

Neither Mr. Bruno nor his co-defendants offered any testimony in their own defense.

Finally, we reach the alleged unnecessarily suggestive pretrial identifications, the subject of the instant petition. On April 4, 1947, DiBari identified the three assailants at a Brooklyn police station. The three subjects were in a room, and witness DiBari testified that he only looked at these three men, and identified them. He did state, however, that there might have been several other men in the room besides the subjects though he could not remember specifically if such was the case. Later that night, DiBari identified the assailants at another police station, in the presence of an assistant district attorney.

In Neil v. Biggers, 409 U.S. 188, 93 S.Ct. 375, 34 L.Ed. 2d 401 (1972), the Supreme Court held that in cases like that now before us, where the identification occurred before the decision in Stovall v. Denno, 388 U.S. 293, 87 S.Ct. 1967, 18 L.Ed. 2d 1199 (1967), a confrontation is not objectionable even though impermissibly suggestive, if

7.

it is reliable.

"The purpose of a strict rule barring evidence of unnecessarily suggestive confrontations would be to deter the police from using a less reliable procedure where a more reliable one may be available, and would not be based on the assumption that in every instance the admission of evidence of such confrontation offends due process Such a rule would have no place in the present case, since both the confrontation and the trial preceded Stovall v. Denno, supra, when we first gave notice that the suggestiveness of confrontation procedures was anything other than a matter to be argued to the jury." Neil v. Biggers, supra, 409 U.S. at 199, 93 S.Ct. at 382.

Petitioner requests that a hearing be held for the issue of the suggestiveness of the identification. At the time of trial, counsel for both sides appear to have had ample opportunity to explore the questioned identifications; and indeed, defense counsel did cross-examine DiBari concerning the identification. Petitioner's request for a hearing in this regard seems to have as its basis only that the trial jury made the wrong decision. This Court feels that the facts regarding the identification are sufficiently contained in the trial transcript and that justice would not be served by asking the same participants questions about an incident which occurred almost 28 years ago. Consequently, petitioner's request for a hearing in this matter is denied.

Furthermore, petitioner asserts that the failure of the Government to use a more reliable source of pretrial identification than the one actually used, when such source is available, establishes prima facie that the in-court

8.

identification testimony is tainted and therefore should be excluded. This argument was specifically rejected by the Supreme Court in Neil v. Biggers, supra. See United States v. Evans, 484 F.2d 1178 (2d Cir. 1973).

Petitioner also re-asserts the same grounds for DiBari's unreliability that was considered by the jury itself. It has long been established that "the result of the witness' observation need not be positive or absolute certainty . . .; it suffices if he had an opportunity of personal observation and did get some impressions from this observation." 2 Wigmore, Evidence § 658 (3d Ed., 1940). As the Supreme Court noted in Stovall v. Denno, 338 U.S. 293, 299-300, 87 S.Ct. 1967, 1971, 18 L.Ed 2d 1199 (1967): "The overwhelming majority of American courts have always treated the evidence question [of eyewitness identification] not as one of admissibility but as one of credibility for the jury."

The credibility issue which the petitioner has raised was resolved against him by a trial jury; therefore, petitioner has the burden of establishing by convincing evidence that the factual determination of the jury was erroneous. 28 U.S.C. § 2254(d), LaValle v. Delle Rose, 410 U.S. 690, 93 S.Ct. 1203, 35 L.Ed. 2d 637 (1973).

Judge Leibowitz charged the trial jury extensively that it must acquit petitioner and his co-defendants if it was not satisfied beyond a reasonable doubt of the accuracy of

9.

DiBari's identification of the defendants.

As a result, the Court feels that the petitioner has failed to put forth sufficient evidence, beyond mere legal conclusions, to fulfill his burden of setting forth a claim for which relief can be granted. Petitioner claims that the absence of a line-up is a prima-facie showing of a tainted identification, yet Neil v. Biggers specifically rejects such an argument. The second prong of petitioner's attack on DiBari's in-court identification rests solely upon his assertion of DiBari's lack of credibility. Yet, this issue has already been ruled upon, and it is not the province of this Court, under federal habeas corpus, to relitigate the issue of guilt or innocence.

Finally, we turn to the central issue raised by the present petition, as applied by the standard set by Neil v. Biggers, supra, i.e., whether under the "totality of the circumstances" the identification was reliable even if it is assumed arguendo that the controntation procedure was suggestive. In such a case Neil v. Biggers, supra, tells us:

"[T]he factors to be considered in evaluating the likelihood of misidentification include the opportunity of the witness to view the criminal at the time of the crime, the witness' degree of attention, the accuracy of the witness' prior description of the criminal, the level of certainty demonstrated by the witness at the confrontation, and the length of time between the crime and the confrontation."
Id. at 199, 93 S.Ct. at 382.

Applying this standard, the Court finds Mr. DiBari's identification reliable. He testified that he had been able

10.

to see the defendants at close range when they first entered the storeroom, that the light in the storeroom was good, and that he looked at the faces of the assailants, who were not wearing any disguises.

DiBari was not a casual bystander to the crime, but the victim of it, thereby motivating him to make a careful observation of the robbers to assist his employers in recovering their losses, which indeed was part of his job as a night watchman.

While the amount of time between the challenged confrontation and the robbery, slightly less than four months, was greater than the time between the show-ups and the trial, approximately one a half months, the time lapse between the December robbery and the May trial was sufficiently brief to warrant the conclusion that DiBari's identification at trial was based on his observations at the time of the crime, and not his observations at the police station. In Neil v. Biggers, supra, the Supreme Court found no substantial likelihood of misidentification in spite of a seven month lapse between the crime and the police station showup.

Mr. DiBari was subjected to extensive cross-examination at trial concerning the identification question, including his ability to read the clock in the court room as well as his ability to describe several spectators in the audience. Nevertheless, DiBari remained adamant in his belief

11.

that petitioner and his co-defendants were the men who robbed him.

The trial record discloses several discrepancies concerning the police station identifications. (DiBari testified that one of the show-ups took place with two other unknown men in the room, but he also testified that he only noticed the defendants and could not remember if there were others in the room). Nevertheless, DiBari's overall trial testimony indicates that he had ample opportunity to observe petitioner and his accomplices during the commission of the crime, and therefore his in-court identifications were reliable. For these reasons the petition is denied.

SO ORDERED.

The Clerk of the Court is directed to enter judgment in favor of the respondent and against petitioner dismissing the petition.

The Clerk is further directed to forward a copy of this memorandum of decision and order to the petitioner.

U.S.D.J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

(Closed)

233

UNITED STATES OF AMERICA
ex rel. ANTHONY BRUNO,

Petitioner,

-against-

HON, J.E. LAVALLE, Superintendent of
Clinton Correctional Facility,
Dannemora, New York 12929,

Respondent.

JUDGMENT

74 C 329

FILED

FILED
IN CLERK'S OFFICE
DISTRICT COURT E.D. N.Y.

★ APR 15 1975 ★

TIME A.M.

P.M.

A memorandum and order of the Honorable

Thomas C. Platt, United States District Judge, having been
filed on April 15, 1975, denying the petition and directing
the Clerk to enter judgment in favor of the respondent and
against the petitioner dismissing the petition, it is

ORDERED and ADJUDGED that the petitioner
take nothing of the respondent and that the petition is dis-
missed.

Dated: Brooklyn, New York
April 16, 1975

Lewis Orzel
Clerk

(12)

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

OCT 29 1975

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

TIME A.M.
P.M.

UNITED STATES OF AMERICA
ex rel ANTHONY BRUNO,

74 C 329

Petitioner,

SUPPLEMENTAL MEMORANDUM
AND ORDER

-against-

October 23, 1975

HON. J. E. LAVALLE, Superintendent of
Clinton Correctional Facility,
Dannemora, New York 12929,

Respondent.

M' FILMED

PLATT, D.J.

On April 15, 1975, this Court denied petitioner's application for a writ of habeas corpus. On April 23, 1975, relator petitioned for a certificate of probable cause, pursuant to Title 28 U.S.C. § 2253 and Rule 22(b) of the Federal Rules of Appellate Procedure, to enable him to appeal that denial.

The determination of petitioner's application involves the question of whether there exists "probable cause" for an appeal. United States ex rel. La Marca v. Denno, 257 F.2d 295, 297 (2d Cir.), cert. denied, 355 U.S. 920, 78 S.Ct. 351, 2 L.Ed. 2d 279 (1958). See also United States ex rel. Rivera v. Reeves, 246 F.Supp. 599, 601 (S.D.N.Y. 1965). Congress' rationale in requiring state prisoners to obtain certificates of probable cause was to eliminate the abuse of the writ of habeas corpus in the federal courts by the undue

15

2.

interference with state processes incident to protracted appellate proceedings in frivolous cases." Ex parte Farrell, 189 F.2d 540, 543 (1st Cir.), cert. denied, Farrell v. O'Brien, 342 U.S. 839, 72 S.Ct. 64, 96 L.Ed. 634 (1951). See also United States ex rel. Siegal v. Follette, 290 F.Supp. 636 (S.D.N.Y. 1968). A certificate of probable cause, therefore, requires something more than a frivolous assertion. Some courts have said it requires "a substantial question worthy of consideration." United States ex rel. Stewart v. Ragen, 321 F.2d 312 (7th Cir. 1956). Other courts have stated that there must be "federal questions adequate to deserve encouragement to proceed further." United States ex rel. Jones v. Richmond, 484 F.2d 312 (2d Cir.), cert. denied, 335 U.S. 846, 78 S.Ct. 71, 2 L.Ed.2d 56 (1957). However, no matter which standard of "probable cause" is chosen, this Court finds no basis for granting the certificate.

As was true upon the original petition, we find petitioner's contention that he was subjected to two separate unnecessarily suggestive pretrial identifications by the victim of the crime, foreclosed by controlling Supreme Court decisions and authority in this Circuit. See Stovall v. Denno, 388 U.S. 293, 87 S.Ct. 1967, 18 L.Ed. 2d 1199 (1967); Neil v. Biggers, 409 U.S. 188, 93 S.Ct. 375, 34 L.Ed. 2d 401 (1972); LaValle v. Della Rose, 410 U.S. 690, 93 S.Ct. 1203, 35 L.Ed. 2d 637 (1973); and United States v. Evans, 484 F.2d 1178 (2d Cir. 1973).

3.

Accordingly, the application for a certificate of probable cause is denied.

SO ORDERED.

The Clerk is directed to forward a copy of this memorandum and order to the petitioner.

Thomas C. Clitt

U.S.D.J.

PRO 53
2/22/77
75-8350

UNITED STATES COURT OF APPEALS

Second Circuit

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 24th day of February, one thousand nine hundred and seventy-seven.

Anthony Bruno,

Appellant,

v.

J. Edwin LaVallee, Superintendent,

Appellee.

Appellant

A motion having been made herein by ~~relator~~ ^{pro se} for a certificate of probable cause, for leave to proceed in forma pauperis, ~~for the purpose of the motion and the expenses of the United States~~ ^{and} for the assignment of counsel ~~and for~~

Upon consideration thereof, it is

Ordered that said motion be and it hereby is GRANTED.

WRM EVG Carter

Robert H. Carter
Robert H. Carter
Robert H. Carter

Circuit Judges

STATE OF NEW YORK — DEPARTMENT OF CORRECTIONAL SERVICES
CERTIFICATE OF RELEASE ON PAROLE

238

SENTENCE

INDETERMINATE

X

REFORMATORY

NYSID No: 75837X

BRUNO, Anthony EH 112

now confined in

Fishkill Correctional Facility
Elderly & Handicapped Unit

who was convicted of Robb. 1st; G.L. 1st; Asslt. 2nd. and sentenced in the county of Kings

at a term of the County Court, Judge Leibowitz

presiding, on the 12th day of September 19 47

and received at Auburn Prison on the 10th day of March 19 48

for the term of 30-0-60-0

the maximum term of which sentence expires on the 8th day of August 19 2007
has agreed to lead an honest and upright life and abide by the rules to which (he) (she) has signed (his) (her) name here below, and is hereby granted parole by the Board of Parole, by virtue of the authority conferred by law upon said board.

It is therefore directed that (he) (she) be released and placed under the jurisdiction of said Board of Parole until the expiration of the maximum term.

Signed this 4th day of April 19 74 at Beacon, N.Y.

Date of Parole: Board of Parole:

5/10/74

Milton B. Lewis

Martin Gilbride

Louis A. Piarro

Anthony Bruno

in consideration of being granted release, promise, with full knowledge that failure to keep such promise may result in the revocation of my release, that I will faithfully keep all the conditions specified on this sheet and all other conditions and instructions given to me by the Board of Parole or any of its representatives.

1. I will proceed directly to 1213 79th St., 2nd Fl., Brooklyn, N.Y., the place to which I have been assigned, and within twenty-four hours, I will make my arrival report to Department of Correctional Services, Parole Area Office, 314 West 40th Street, New York, N.Y.

2. I will not leave the State of New York, or any other State to which I may be released or transferred, or any area as defined by the Parole Officer in writing, without the written or documented permission of my Parole Officer.

3. (a) I will fully comply with the instructions of my Parole Officer. (b) I will make office and/or written reports as I am directed. (c) I will reply promptly to any communication from a Member of the Board of Parole, a Parole Officer, or other authorized representative of the Board of Parole. (d) I am aware that making false reports may be considered a violation of the condition of my release.

4. (a) I will permit my Parole Officer to visit me at my residence or place of employment. (b) I will discuss with my Parole Officer any proposed changes in my residence, and I will not change my residence without prior approval of my Parole Officer. (c) I understand that I am legally in the custody of the Board of Parole and that my person, residence, or any property under my control may be searched by my Parole Officer or by any other representative of the Board of Parole at its direction. (d) If so directed, I will observe a curfew.

5. I will avoid the excessive use of alcoholic beverages. If so directed by the Parole Board or my Parole Officer, I will abstain completely from the use of alcoholic beverages.

6. (a) I will make every effort to secure and maintain gainful employment. (b) If, for any reason, I lose my employment, I will report this to my Parole Officer immediately and I will cooperate fully in finding new employment. (c) I will not voluntarily quit my employment without prior approval of my Parole Officer.

7. (a) I will lead a law-abiding life and conduct myself as a good citizen. (b) I will not be in the company of or fraternize with any person having a criminal record. If there are unavoidable circumstances (such as work, school, family or group therapy and the like), I will discuss these with my Parole Officer and seek his written permission. (c) I will support my dependents, if any, and assume toward them my legal and moral obligations. (d) I promise my behavior will not be a menace to the safety or well-being of myself, other individuals, or to society. (e) I will advise my Parole Officer at any time that I am questioned or arrested by members of any law enforcement agency.

8. I will consult with my Parole Officer before applying for a license to marry.

9. I will not carry from the Facility from which I am released, or cause to be delivered or sent to any Correctional Facility, any written or verbal message or any object or property of any kind without proper permission.

10. (a) Upon my release, I will advise my Parole Officer as to the status of any driver's license I possess. (b) I will seek and obtain permission of my Parole Officer before applying for or renewing a driver's license. (c) I will request and obtain permission of my Parole Officer before owning or purchasing any motor vehicle.

11. I will not own, possess, or purchase firearms or weapons of any kind.

12. I will not use, possess, or purchase any illegal drugs or use or possess those that have been unlawfully obtained.

13. Should the occasion arise, I will waive extradition and will not resist being returned by the Board of Parole to the State of New York.

14. Special Conditions:

I hereby certify that I have read and that I understand the foregoing conditions of parole and that I have received a copy of this Certificate of Release.

Signed this 9th day of May 19 74

Witness: Beacon, N.Y.

Address:

COPY OF THE ATTORNEY
GENERAL'S OFFICE

MAY 5 - 1977

Louis J. LeFevre
ATTORNEY GENERAL
LOS